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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RANDY UMANZOR,

Plaintiff,

-against- 14 Civ. 9850
(VSB)
NEW YORK CITY POLICE DEPARTMENT,

Defendant.

- - - - -x

DEPOSITION of DAVID LICHTENSTEIN, taken
by the Plaintiff pursuant to Subpoena, held at
the offices of The Harman Firm, 1776 Broadway,
New York, New York, on Wednesday, July 22, 2015,
commencing at 11:01 a.m., before Margaret M.
Harris, a Shorthand (Stenotype) Reporter and
Notary Public within and for the State of New
York.

A P P E A R A N C E S :

THE HARMAN FIRM
Attorneys for Plaintiff
1776 Broadway
New York, New York 10019

BY: WALKER HARMAN, ESQ.
EDGAR RIVERA, ESQ.

NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL
Attorneys for Defendant
100 Church Street
New York, New York 10007

BY: JOSEPH LOCKINGER, ESQ.

ALSO PRESENT:

Randy Umanzor

1
2 IT IS HEREBY STIPULATED AND
3 AGREED that the filing and sealing of
4 the within deposition be, and the same
5 are hereby waived;

6 IT IS FURTHER STIPULATED AND
7 AGREED that all objections, except as
8 to the form of the question, be and
9 the same are hereby reserved to the
10 time of the trial;

11 IT IS FURTHER STIPULATED AND
12 AGREED that the within deposition may
13 be sworn to before any Notary Public
14 with the same force and effect as if
15 sworn to before a Judge of this Court;

16 IT IS FURTHER STIPULATED that
17 the transcript is to be certified by
18 the reporter.
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(One-page document was marked as Plaintiff's Exhibit 1 for identification, as of this date.)

(A three-page document was marked as Plaintiff's Exhibit 2 for identification, as of this date.)

(A four-page document was marked as Plaintiff's Exhibit 3 for identification, as of this date.)

(Health Grove document was marked as Plaintiff's Exhibit 4 for identification, as of this date.)

(A three-page document was marked as Plaintiff's Exhibit 5 for identification, as of this date.)

(Complaint was marked as Plaintiff's Exhibit 6 for identification, as of this date.)

(Summons was marked as Plaintiff's Exhibit 7 for identification, as of this date.)

(Answer was marked as Plaintiff's Exhibit 8 for identification, as of this date.)

1
2 (Verified Bill of
3 Particulars was marked as
4 Plaintiff's Exhibit 9 for
5 identification, as of this date.)

6 (Amended Verified Bill of
7 Particulars was marked as
8 Plaintiff's Exhibit 10 for
9 identification, as of this date.)

10 (Medical and Physical
11 Fitness Standards and Procedures
12 for Police Officer Candidate was
13 marked as Plaintiff's Exhibit 11
14 for identification, as of this
15 date.)

16 (A document Bates stamped
17 D000017 through D000018 was marked
18 as Plaintiff's Exhibit 12 for
19 identification, as of this date.)

20 (A document Bates stamped
21 D000019 through D000021 was marked
22 as Plaintiff's Exhibit 13 for
23 identification, as of this date.)

24 (A document Bates stamped
25 D000022 through D000024 was marked

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as Plaintiff's Exhibit 14 for
identification, as of this date.)

(A document Bates stamped
D000026 through D000027 was marked
as Plaintiff's Exhibit 15 for
identification, as of this date.)

D A V I D L I C H T E N S T E I N, called as a
witness, having been first duly
sworn/affirmed by Margaret M. Harris, a
Notary Public within and for the State of
New York, was examined and testified as
follows:

EXAMINATION

BY MR. HARMAN:

Q Good morning.

 Could you please state your name
for the record.

A David Lichtenstein.

Q Could you spell that, please?

A L-I-C-H-T-E-N-S-T-E-I-N.

Q And do you have a middle name?

A Ira, I-R-A.

Q And have you ever been known by
any other name?

1 Lichtenstein

2 A No.

3 Q Have you ever been deposed
4 before?

5 A Yes.

6 Q When?

7 A Most recently within the last
8 three months.

9 Q And what was the purpose of that
10 deposition?

11 A Representing the Police
12 Department in a legal matter.

13 Q And then prior to that, we are
14 going to go over each time you have been
15 deposed, so I'm going to come back to the most
16 recent time that you were deposed.

17 The time before that, working in
18 reverse order, when was the second most recent
19 time that you were deposed?

20 A I would say two years ago.

21 Q What was the purpose of that
22 deposition?

23 MR. LOCKINGER: Objection.

24 You can answer.

25 A It was an examination before

1 Lichtenstein

2 trial for a malpractice action.

3 Q Were you a defendant in that
4 action?

5 A I was one of multiple defendants.

6 Q Prior to the malpractice action?

7 A I wouldn't have exact knowledge
8 as to dates and times, but I would estimate at
9 some time during that same year in a Police
10 Department issue I was deposed.

11 Q And then prior to that, we talked
12 about three -- withdrawn.

13 How many times have you been
14 deposed?

15 MR. LOCKINGER: Objection.

16 You can answer.

17 A I can't give an exact number.

18 Q Approximate.

19 A Twenty times.

20 Q And of those 20, how many
21 involved the Police Department?

22 MR. LOCKINGER: Objection.

23 You can answer.

24 A I would say 16.

25 Q So let's talk about the other

1 Lichtenstein

2 four.

3 Tell me about the four times that
4 you were deposed that did not involve the Police
5 Department.

6 A Once again, I can't say for
7 certainty, but I'll say those were four
8 malpractice actions.

9 Q So tell me about the examination
10 before trial that was two years ago.

11 You were a defendant in an
12 action?

13 A Yes.

14 Q Who was the plaintiff?

15 A I don't know that I can answer
16 that question legally.

17 Q Is the case filed in court?

18 A Yes.

19 Q So what would prevent you from
20 answering that question?

21 A I believe there might be privacy
22 concerns regarding the case.

23 I'm not allowed to discuss until
24 the case is adjudicated.

25 MR. HARMAN: Let's go off

1 Lichtenstein

2 the record.

3 (Discussion off the record.)

4 MR. HARMAN: Back on the
5 record.

6 BY MR. HARMAN:

7 Q Who is the plaintiff in the
8 matter that you were a defendant in that you
9 have identified as having an examination before
10 trial two years ago?

11 MR. LOCKINGER: Objection.
12 You can answer.

13 A Greenberg.

14 Q Greenberg is the last name of the
15 plaintiff?

16 A Yes.

17 Q And what's the individual's first
18 name?

19 A I believe it's Irving.

20 Q And was there just one plaintiff
21 in the action?

22 A No, there were multiple.

23 Q How many plaintiffs were in the
24 action?

25 A I think six or seven.

1 Lichtenstein

2 Q Where is the action filed?

3 A I believe it's filed in Queens
4 County.

5 Q Are you represented by counsel in
6 that action?

7 A Yes.

8 Q Who is your lawyer or lawyers?

9 A It's a Long Island firm. I don't
10 remember the name.

11 Q Did you tender the claim to your
12 malpractice carrier?

13 A Yes.

14 Q Who is your malpractice carrier?

15 A I believe it's MMIC.

16 Q And is your malpractice carrier
17 paying the defense costs or are you paying the
18 defense costs?

19 A Malpractice is paying the defense
20 costs.

21 Q Who are the other defendants?

22 A There's a surgeon who I forget
23 his name, but he's expired. There's a hospital,
24 Peninsula Hospital. There's an infectious
25 disease specialist. And I believe there were

1 Lichtenstein

2 several other specialists involved.

3 I don't recall the names of the
4 doctors.

5 Q Did you treat Irving Greenberg?

6 A It was his wife. His wife is
7 deceased. She was the plaintiff, I guess.

8 Q Did you treat his wife?

9 A Yes.

10 Q What's her name?

11 A I think it's Elizabeth Greenberg.

12 Q And do you know under what
13 circumstances she passed?

14 MR. LOCKINGER: Objection.
15 You can answer if you can.

16 A It's a very old case. It's over
17 11 years old.

18 She had had a, possibly a
19 surgical misadventure with her gall bladder and
20 I was taking care of her in the intensive care
21 unit and she died of septic shock.

22 Q And so are the plaintiffs her
23 relatives?

24 A Her husband.

25 Q You said there were six or seven.

1 Lichtenstein

2 A I'm sorry, I thought you meant
3 defendants.

4 Q Six or seven defendants and one
5 plaintiff and the plaintiff is the husband of
6 the deceased?

7 A Yes.

8 Q And you treated her in the
9 intensive care unit?

10 A Yes.

11 Q Did you diagnose her with any
12 conditions?

13 MR. LOCKINGER: Objection.

14 A Yes.

15 Q What conditions did you diagnose
16 her with?

17 A Adrenal insufficiency, septic
18 shock, those were her two main diagnoses.

19 Q Are there allegations in the
20 lawsuit that you misdiagnosed her?

21 A Yes.

22 Q And you say the matter is
23 ongoing?

24 A Yes.

25 Q It has not been resolved?

1 Lichtenstein

2 A No.

3 Q Prior to your EBT in the
4 Greenberg matter, you testified to approximately
5 four times that you have been deposed.

6 Are all of those that didn't
7 involve the New York City Police Department,
8 correct?

9 A Yes.

10 Q And of those, do you have
11 specific recollections of those being
12 malpractice actions?

13 A Yes.

14 Q Were you deposed in all of those?

15 A Yes.

16 Q So let's talk about the second
17 time that you were called.

18 MR. LOCKINGER: Objection.

19 You can answer.

20 A We are going --

21 Q Back.

22 A Backwards.

23 Q So you told me about two years
24 ago in the Greenberg case you appeared for an
25 EBT.

1 Lichtenstein

2 When was the time prior to that?

3 I'm taking it you have no
4 recollection of being deposed in the last two
5 years?

6 A Once again, this is backwards in
7 time, so I may have the cases mixed up.

8 Q I understand and appreciate that.

9 So that the record is clear, you
10 are not definite on your memory and I'm only
11 asking you to tell me what you recall.

12 A There was a Mr. London and the
13 allegation was failure to treat high blood
14 pressure.

15 Q And you appeared for an EBT?

16 A Yes.

17 Q Was that matter resolved?

18 A Yes.

19 Q Do you know how it was resolved?

20 A It was settled.

21 Q Did you make any cash payments as
22 part of the settlement?

23 A Yes.

24 Q How about the third time?

25 A I don't remember her last name,

1 Lichtenstein

2 but it was, it was a person who had multiple
3 embolic strokes and the allegation was failure
4 to diagnosis endocarditis.

5 Q What is endocarditis?

6 A Endocarditis is an infection of
7 the heart valves.

8 Q Did the patient pass?

9 MR. LOCKINGER: Objection.

10 A Eventually, but not in regard to
11 the --

12 Q The allegation?

13 A The allegation, yes.

14 Q And was that matter resolved?

15 A Yes.

16 Q And did you make a cash payment
17 as part of that resolution?

18 A Yes.

19 Q How about the fourth time?

20 A The fourth time was, once again,
21 I don't remember the plaintiff's name, but it
22 was a similar allegation of failure to diagnose
23 endocarditis.

24 Q Is endocarditis a --

25 A Endo, E-N-D-O.

1 Lichtenstein

2 Q Is endocarditis, is that a
3 specialty of yours?

4 A No. It's a disorder that an
5 internist would have to deal with, internal
6 medical person.

7 Q And did the patient pass?

8 A No.

9 Q And was the matter resolved?

10 A Yes, it was settled.

11 Q And did you make a cash payment
12 as part of that settlement?

13 A Yes.

14 Q Where was the action filed?

15 A I believe it was filed in either
16 Long Island or in Queens County.

17 Q And how about the third time, the
18 other incident involving the, involving
19 endocarditis?

20 A I believe that was filed in
21 Queens County also.

22 Q And approximately when did you
23 provide testimony as part of the third case
24 involving multiple embolic strokes?

25 A Well over ten years ago.

1 Lichtenstein

2 Q And how about the fourth incident
3 also involving endocarditis?

4 A Similarly 15 years ago, possibly.

5 Q Now, let's talk about the 16
6 depositions you have given as part of your role
7 in the NYPD.

8 A I would like to qualify that
9 statement, because I'm not an attorney.

10 Multiple times I have had to meet
11 with legal counsel, but it wasn't as per
12 subpoena. It would be either a federal matter
13 or it would be a City Council matter.

14 So I don't know if they really
15 all count as what we are doing here today, but I
16 would have to meet with an attorney and at some
17 point I would have to appear in front of a
18 magistrate.

19 Q I'm going to ask you about sworn
20 testimony. So that could be in front of a
21 magistrate judge, it could be in front of an
22 administrative law judge, in front of a court
23 reporter in a conference room or a court
24 reporter in an office or at the Police
25 Department in front of a court reporter.

1 Lichtenstein

2 So the idea is that if there is
3 an individual in the room who is typing into a
4 laptop or into a court reporting machine or you
5 are being recorded in some way so that the
6 recording can be transcribed, I'm going to ask
7 you about those instances.

8 Do you understand?

9 A Yes.

10 Q So is it still your recollection
11 that you have been deposed 16 times as part of
12 your role with NYPD?

13 A It's more or less. I'm not
14 testifying to an exact number.

15 Q Would it be easier for you to go
16 in a reverse order or do you just want to tell
17 me about them as you recall them?

18 A I think it's easier, and, once
19 again, I may omit because of my recollection.

20 Q I understand.

21 A At least half of these involved
22 department trials, and a department trial is
23 where a police officer has been charged with an
24 offense, in this case because I, and at that
25 time I was working for the special medicine

1 Lichtenstein

2 district, it involved medical fraud or theft of
3 services, and those were in front of an
4 administrative law judge at One Police Plaza.

5 One case involved somebody with
6 cervical spine disease.

7 Q Could we go back for a second.

8 You said about half involved
9 disciplinary trials; is that fair?

10 A Yes.

11 Q So disciplinary trials.

12 And I take it there were
13 allegations that an employee of the department
14 and/or a police officer, just police officer or
15 any employee?

16 A Only police officers.

17 Q Police officers had committed
18 some kind of misconduct like medical fraud or
19 theft of services?

20 A Correct.

21 Q And you were providing testimony
22 on what?

23 MR. LOCKINGER: Objection.

24 You can answer.

25 A On investigations as to whether

1 Lichtenstein

2 their medical claims were factual or fraudulent.

3 Q Tell me every single instance
4 that you recall that someone claimed to have a
5 medical condition and you offered testimony that
6 they did not. I want to know what the nature of
7 the condition was and what your position was on
8 the condition.

9 MR. LOCKINGER: Objection.

10 You can answer.

11 Q To summarize, the bulk were
12 either alterations in the cervical or lumbar
13 spine causing disability, and there were one or
14 two shoulder derangement issues, claims of
15 disability.

16 Two officers claimed they had
17 shoulder disabilities, and I believe the bulk of
18 the other cases involved either lumbar or
19 cervical spine disc disease causing disability.

20 Oh, I'm sorry, and one involved a
21 hand injury.

22 Did any of them involve multiple
23 sclerosis?

24 A No.

25 Q Did any one of them involve any

1 Lichtenstein

2 neurological disorders?

3 A By extension, the cervical and
4 lumbar and wrist and shoulder claims all had
5 neuropathy or an alteration in sensation or
6 motor strength as part of their claim, yes.

7 Q How about did any of them involve
8 neurological conditions not related to trauma?

9 A Technically these were all claims
10 of job-induced injury, so they were all
11 associated with trauma.

12 Q And none were not associated with
13 trauma?

14 MR. LOCKINGER: Objection.
15 You can answer.

16 A I'm sorry, say that again.

17 Q They were all associated with
18 trauma?

19 A Yes.

20 Q Let's move on.

21 Tell me about the other eight or
22 so.

23 A The other eight, and there could
24 have been twice that many --

25 Q Well, you said approximately 16.

1 Lichtenstein

2 A It could have been 30. I don't
3 have an independent recollection, sir.

4 This has been over 15 years.

5 Q So you worked --

6 A For the Police Department --

7 Q And you believe it could be
8 anywhere from 16 times to 30 times that you've
9 offered testimony?

10 A Yes.

11 Q Let's talk about those other
12 instances that you remember that didn't involve
13 providing testimony regarding a disciplinary
14 proceeding related to a medical disability.

15 A The majority of those cases were
16 involved with hearing deficiency.

17 There was one case of
18 fibromyalgia.

19 There was a recent seizure
20 disorder where I was deposed. I believe that
21 was the deposition, I think that was the most
22 recent deposition I gave.

23 Q Two months ago?

24 A It's a few months ago or a year
25 ago. Once again, they all kind of merge

1 Lichtenstein

2 together in my head.

3 Q Anything else you recall?

4 A I'm trying to, I would say that's
5 the bulk of the claims that I had to deal with.

6 Q In what context were you
7 providing testimony on a hearing disorder?

8 MR. LOCKINGER: Objection.

9 You can answer.

10 A For the last ten years I've been
11 in charge of candidate testing at the Police
12 Department and people who have been disqualified
13 have the right to an appeal.

14 I'm also in charge of civilian
15 affairs, and as part of the civilian contract
16 with the city, they can apply for grants of lost
17 time, and I represent the department if there is
18 a dispute about not awarding grants to those
19 civilians.

20 Q Civilian affairs oversees what
21 type of employee?

22 A Anyone who doesn't have a
23 firearm.

24 There's multiple titles in the
25 department, such as traffic enforcement, school

1 Lichtenstein

2 safety, PCT.

3 Q Are there instances in which an
4 individual becomes a police officer and is no
5 longer a police officer, but falls under the
6 civilian affairs umbrella?

7 A No. The reverse is true. They
8 may be civilians.

9 Q And then become a police officer?

10 A Yes. Police officer is what is
11 called a competitive title.

12 Q Meaning you have to take a test?

13 A There has to be a certain amount
14 of college credits, they have to take a special
15 test, they have to have a certain level of
16 physical and mental fitness.

17 Q And so had the Police Department
18 disqualified someone for entrance because of a
19 hearing condition?

20 A Yes.

21 Q And have you, was the decision
22 based on your analysis?

23 MR. LOCKINGER: Objection.

24 You can answer.

25 A Yes.

1 Lichtenstein

2 Q And were you offering testimony
3 as part of an appeal?

4 A Yes.

5 Q How did that appeal process work?
6 Do you remember the name of the individual, by
7 the way?

8 A There's far too many persons.

9 Q So you offered testimony on
10 multiple occasions regarding individuals who
11 were disqualified for hearing conditions?

12 A Correct.

13 Q Do you remember any names?

14 A No.

15 Q So tell me how the appeal process
16 worked and how it results and you provide
17 testimony.

18 So the individual is
19 disqualified, I assume they get a letter?

20 A The candidates come in and they
21 are tested, they are screened by one of our
22 officers, and if their audio threshold is
23 abnormal then we place them on review and they
24 go to an independent private, either audiologist
25 or ENT doctor, and then they provide an

1 Lichtenstein

2 independent evaluation of that person's hearing.

3 If that still shows a severe
4 deficiency, then at that point the candidate is
5 disqualified and at that point they can mount an
6 appeal.

7 Q But as part of this procedure,
8 you send the individual to a private doctor
9 outside the department?

10 A Correct.

11 Q And was that done in every single
12 instance in which you disqualified someone with
13 a hearing condition?

14 MR. LOCKINGER: Objection.
15 You can answer.

16 A Yes.

17 Q And you ultimately provided
18 testimony because the individual appealed the
19 decision?

20 MR. LOCKINGER: Objection.
21 You can answer.

22 A Correct.

23 Q And in the instances in which you
24 provided testimony related to an appeal
25 concerning a hearing condition, did any of the

1 Lichtenstein

2 individuals prevail on their appeal?

3 MR. LOCKINGER: Objection.

4 You can answer.

5 A Yes.

6 Q Approximately how many?

7 A One.

8 Q Do you know the individual's
9 name?

10 A I don't recall, but the
11 circumstances were that it was, it was a veteran
12 from Iraq who had an IAD explode by his head, he
13 had a relatively severe hearing deficiency on
14 one side, his other side was normal. We went --
15 we were in the initial aspects of his appeal
16 where we actually appeared in front of a
17 magistrate, he provided new medical data at that
18 hearing and I reversed my decision and I
19 qualified him.

20 Q When you say "magistrate," what
21 do you mean by that?

22 A There is a panel of four or five
23 people appointed by the city to hear these
24 cases.

25 I think it's called an OATH

1 Lichtenstein

2 trial.

3 Q Right, the administrative law
4 judges for the City of New York.

5 I just wanted it to be clear.

6 A If I'm unclear it's because, once
7 again, I just don't know the jargon.

8 Q I understand.

9 Tell me how, if at all, would you
10 factor in corrective devices in cases involving
11 someone with a hearing deficiency?

12 MR. LOCKINGER: Objection.

13 You can answer.

14 A The patrol guide clearly states
15 that you are not allowed to have any external
16 device that would interfere with your
17 performance as a police officer.

18 And up until recently that was
19 pretty much our policy.

20 However, we were just recently
21 overturned in court.

22 Q And tell me what you know about
23 that.

24 A It was somebody in the
25 management, he was a deputy inspector from

1 Lichtenstein
2 internal affairs, and he had applied through his
3 insurance for a hearing aid, and because he's
4 still a uniformed member of the service, he was
5 placed on review and his hearing had, for one
6 reason or another, gone to the point where he
7 needed an external audio device, and he was
8 pensioned from the job, he had an ordinary
9 disability pension from the job and he
10 challenged it and he won in court and he's been
11 reinstated.

12 Q What is his name?

13 A I'm sorry, I'm not good with
14 names.

15 It's a matter of public record.

16 Q And that was a case filed in
17 court against the New York City Police
18 Department for disability discrimination?

19 MR. LOCKINGER: Objection.

20 You can answer, if you
21 can.

22 A I believe so, and I believe it
23 was 2014 or 2015.

24 Q It was a recent case?

25 A Yes.

1 Lichtenstein

2 Q What about, you said external
3 devices.

4 What do you mean by that?

5 A Crutches, braces, those kinds of
6 things.

7 Q What about an implant?

8 A No, it would -- implants
9 generally wouldn't qualify as an external
10 device.

11 Q What about a small hearing aid
12 that you couldn't see?

13 A The argument at the time, and we
14 have since changed our policy, was that that
15 could be knocked out during a struggle, so it
16 was still considered an external device.

17 Q But the policy has been changed?

18 A Yes.

19 Q How about fibromyalgia, what
20 happened with that?

21 A The person withdrew.

22 Q They withdrew their appeal?

23 A Yes.

24 Q And you disqualified someone
25 because they have fibromyalgia?

1 Lichtenstein

2 A Yes.

3 Q Is that a disqualifying
4 condition?

5 MR. LOCKINGER: Objection.

6 You can answer.

7 A Can I answer that in a broader
8 sense or do you want a specific answer to the
9 fibromyalgia question?

10 Q I want an answer to my question.

11 A In the case of the fibromyalgia
12 person, she was currently having a flare when
13 she applied for the job, but, generally
14 speaking, as of five years ago we got a
15 directive from the law department, we used to
16 have --

17 MR. LOCKINGER: Objection.

18 Q You can tell me what the policy
19 is now without telling me what directives you
20 got from lawyers.

21 A The policy now is that we do
22 not -- there is no absolute medical
23 contraindication to being a police officer, that
24 every case needs to be individually assessed.

25 Q So there is no automatic

1 Lichtenstein

2 exclusion for fibromyalgia?

3 A No longer.

4 Q Was there five years ago?

5 A There were automatic exclusions
6 for certain medical disorders.

7 Q And would that include MS?

8 A Yes.

9 Q When did that policy change?

10 A Roughly five years ago.

11 Q Before five years ago, you were
12 automatically excluding everyone with MS?

13 MR. LOCKINGER: Objection.

14 You can answer.

15 A Yes.

16 Q And you were automatically
17 excluding everybody with fibromyalgia?

18 A No.

19 Q Tell me the conditions that you
20 are familiar with that resulted in automatic
21 exclusions five years ago.

22 MR. LOCKINGER: Objection.

23 You can answer.

24 A Seizure disorder, progressive
25 neurological disorders such as MS, Parkinson's

1 Lichtenstein

2 disease, sickle cell anemia, the loss of one or
3 both limbs.

4 It was a short list.

5 Q It was, and this is the list?

6 A Yes.

7 Q Seizure disorders?

8 A Seizure disorders, on medication.

9 Q Seizure disorders, even if you're
10 on medication?

11 A No, seizure disorder if you are
12 taking medication.

13 If you are not taking medication,
14 then it wasn't an automatic disqualification.

15 Q I'm not sure I understand. I'm
16 sorry.

17 A If you had a history of seizure
18 disorder and you're not taking pills, then it's
19 not an automatic disqualification.

20 Q Why?

21 A Because you don't have active
22 disease and the nature of that disorder is
23 sometimes it could just go away.

24 Q So it's active?

25 A Active.

1 Lichtenstein

2 Q And progressive neurological
3 disorders and you mentioned such as MS.

4 Anything else?

5 A Parkinson's disease.

6 Q Parkinson's disease, sickle cell
7 and loss of one or more limbs, correct?

8 A Yes.

9 Q That's the full list, as you
10 recall?

11 A Yes.

12 Q A third category mentioned that
13 you have offered testimony related to seizure
14 disorders.

15 So tell me what you offered
16 testimony on related to seizure disorders?

17 A There was a candidate who as I
18 recall was initially diagnosed as having
19 seizures after playing video games, was
20 successfully treated with medication, the
21 medication was withdrawn, and two years later
22 when that person was playing video games again
23 started having seizures.

24 Q And what happened, were they
25 disqualified from being a police officer?

1 Lichtenstein

2 A Based on that, there was a
3 question of photostimulus --

4 Q Right.

5 A -- I referred that person to the
6 department neurologist. I didn't make that
7 decision.

8 The department employs other
9 doctors in other specialties and in that case,
10 because I had a question, I referred him to the
11 department neurologist and the department
12 neurologist disqualified him.

13 And although I have ultimate
14 authority, I agreed with him in that case.

15 Q The individual who had the
16 seizure condition related to video games, do you
17 know his name?

18 A No.

19 Q Was the individual set for an
20 evaluation outside of the NYPD?

21 A Yes.

22 Q And so this individual was sent
23 to a department neurologist and someone outside
24 of the NYPD?

25 A Yes.

Lichtenstein

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Q So two separate opinions?

A Yes.

Q And ultimately what was the determination?

A It's an open case.

Q And any other seizure disorders that you offered testimony related to other than this one related to video games?

A No.

Q That's the only one?

A Yes.

Q Going back to the conditions that resulted in automatic disqualifications five years ago, what would happen in the instance of someone was diagnosed with a progressive neurological disorder after they became a New York City police officer?

MR. LOCKINGER: Objection.

You can answer, if you can.

A If it came to our attention in the medical division, because we have no way of following officers unless they bring their medical disorder to our attention, so they would

Lichtenstein

either have to call out sick or independently make us aware that they have a medical issue. We don't screen them as full-duty police officers for medical illnesses, they would have to report it to us.

So if a member had an exacerbation of their disorder and had been in the hospital, then at that time their guns would be removed and they would be placed on restricted duty for one year.

If no new information was forthcoming that would satisfy us in the medical division that that officer could safely fulfill all the duties, then they would be pensioned from the job.

Q So if I understand your testimony correctly, a diagnosis after the commencement of employment as a New York City police officer wouldn't automatically result in termination or in taking away duties?

MR. LOCKINGER: Objection.

Q Do you understand?

A Yes.

And that answer is, it depends on

1 Lichtenstein

2 how that disorder was reported.

3 For example, if it was reported
4 conversationally that the officer had been
5 diagnosed with MS and had been under therapy for
6 five years, six years, and was stable, then for
7 the most part no action would be taken by the
8 medical division.

9 On the other hand, if that
10 officer became acutely ill from the disorder, at
11 that point in time they would be removed from
12 full duty status and placed on restricted duty
13 until a one-year period of time during which
14 either that officer would recuperate or not
15 recuperate and then be sent to the pension
16 board.

17 Q So, again, the Police
18 Department's knowledge of an MS diagnosis does
19 not, after someone commences employment as a
20 police officer, doesn't automatically result in
21 disqualification from active duty?

22 MR. LOCKINGER: Objection.

23 Q It's a yes or no question.

24 A Yes.

25 Q And that was the policy five

1 Lichtenstein

2 years ago?

3 A Yes.

4 Q Has the policy changed?

5 A No.

6 Q And you have testified that the
7 department had a neurologist on staff; is that
8 correct?

9 A Yes.

10 Q What is that individual's name?

11 A I believe his name is Dr.
12 Maniscalco.

13 Q Spell that, please?

14 A I can't. Maniscalco.

15 Q And in how many instances in the
16 last year have you referred patients to Dr.
17 Maniscalco?

18 A 'scalco.

19 Q 'scalco.

20 MR. LOCKINGER: Objection.

21 You can answer.

22 A I would estimate ten times.

23 Q And of those ten referrals, how
24 many of them were related to disqualifications
25 from the cadet program?

Lichtenstein

MR. LOCKINGER: Objection.

You can answer.

A I'm not sure.

Q Any of them? This is just going back the last year?

A I'm not sure. I know there were, I know that there -- I believe there were one or two specific MS cases within the last year or two, and I don't remember if they were cadets or police officer candidates.

Q When you say there were one or two MS cases in the last year, tell me what you remember.

A I remember that in those two instances they were actually hired.

Q Tell me what happened with the first one.

A I believe that the unifying factor in both of those cases was that the disease had a certain degree of longitude where they were asymptomatic and cleared by their own doctors.

Q So I asked you about referrals and you said there were ten, and you are

1 Lichtenstein

2 testifying that two of them related to MS?

3 A I believe so, yes.

4 Q And of those they were
5 individuals that were either trying to enter the
6 cadet program or enter the department?

7 MR. LOCKINGER: Objection.

8 You can answer.

9 A Yes.

10 Q And both those individuals were
11 offered entry into the department or the
12 program?

13 MR. LOCKINGER: Objection.

14 You can answer.

15 A Yes.

16 Q And the reason, as you sit here
17 today, the reason you believe they were offered
18 entrance into the program is because they were
19 determined to be asymptomatic and they were
20 medically cleared by their doctors; is that
21 correct?

22 MR. LOCKINGER: Objection.

23 You can answer.

24 A They were asymptomatic over a
25 period of time and they had medical clearance

1 Lichtenstein
2 from their neurologist.

3 Q What period of time were they
4 asymptomatic?

5 MR. LOCKINGER: Objection.
6 You can answer, if you
7 can.

8 A I believe one was five years and
9 the other may have been, I don't know, I recall
10 one of them being five years. I don't exactly
11 recall the date, and I don't want to guess.

12 But I will say around the same
13 time, within a five-year period.

14 MR. HARMAN: We are going
15 to follow up with a writing, but
16 we are going to ask for all
17 records related to these
18 instances where, I think it's
19 easier rather than rambling on in
20 the record about the documents
21 that we want, but we are going to
22 make some specific document
23 demands and you can follow up
24 with your lawyer, because we'll
25 be submitting the document

1 Lichtenstein
2 requests relating to transcripts
3 of deposition testimony and
4 people work related to
5 evaluations and referrals.

6 I will just make that
7 simple record so that we don't
8 spend time today on that.

9 We will put it in a letter
10 and serve some supplemental
11 requests.

12 Q Is there a number of years, does
13 the department have a rule or regulation related
14 to the number of years you have to be
15 asymptomatic in order to qualify with respect to
16 an MS diagnosis?

17 MR. LOCKINGER: Objection.
18 You can answer, if you
19 can.

20 A There is no exact time period.
21 But --

22 Q So the department doesn't have a
23 rule or regulation?

24 A There is no rule or regulation.

25 Q With respect to these two

1 Lichtenstein

2 individuals, what prompted you to refer them to
3 the neurologist?

4 A They were in good physical
5 condition with no neurological deficits, they
6 had very strong letters from their neurologist
7 that they were in remission, and a reasonable
8 amount of time had occurred since their last
9 episode.

10 Q What's a reasonable amount of
11 time?

12 MR. LOCKINGER: Objection.

13 You can answer.

14 A For me it's three years, more or
15 less three years, and not much less.

16 Q And in your professional
17 experience, how did you arrive at three years as
18 being a reasonable amount of time that someone
19 should be in remission?

20 A Unfortunately, multiple sclerosis
21 is a progressive neurological disorder with no
22 cure.

23 No medical authority can predict
24 how one person is going to do without a certain
25 amount of time going by.

1 Lichtenstein

2 Most studies about predicting the
3 body of remission time and disability usually go
4 from three to five years from when the person
5 was diagnosed.

6 MR. HARMAN: Can you read
7 back the answer, please?

8 (Whereupon, the record was
9 read back by the reporter.)

10 Q What studies are you referring
11 to?

12 A I can't reference them at this
13 time.

14 Q Can you name any study that talks
15 about three to five years?

16 A Not at this time.

17 Q All right.

18 You have been deposed a lot, so
19 I'm only going to remind of the ground rules.

20 First, my name is Walker Harman.
21 I'm an attorney and I represent Randy Umanzor,
22 who is the plaintiff in an action he's brought
23 against the New York City Police Department and
24 he's sitting here at the end of the table.

25 For the record, have you ever met

1 Lichtenstein

2 Mr. Umanzor?

3 A No.

4 Q Have you ever seen him in person?

5 A I may have when he was at the
6 medical division, but I didn't examine him.

7 Q You didn't examine him.

8 Why do you say you may have seen
9 him?

10 A I'm conducting physical exams in
11 the medical division, and the group of
12 candidates are usually in front of me at some
13 point or another.

14 Q Did you ever speak with anybody
15 who examined him?

16 A No.

17 Q And you didn't refer him to a
18 neurologist?

19 A No. He was placed on review.

20 I was going to -- generally
21 speaking, in these cases I'm going to go by the
22 private neurologist evaluation.

23 Q You didn't refer him to the
24 department neurologist?

25 A No.

1 Lichtenstein

2 Q And you didn't refer him to an
3 outside neurologist?

4 A No. I requested his records of
5 his own private neurologist.

6 Q I'm going to ask, I have been and
7 will continue to ask you questions concerning
8 Mr. Umanzor's claims against the department.

9 Do you understand that?

10 A Yes.

11 Q If you want to take a break
12 during the deposition, you can take a break. I
13 would ask that you finish any pending question
14 before you take that break.

15 We should try not to interrupt
16 each other as best we can. That's something
17 that we will both try to work on and I'll ask
18 you to verbalize any answers to any question
19 which you've been doing and I appreciate that.

20 You recognize that you're under
21 oath today?

22 A Yes.

23 Q And that failing to tell the
24 truth at a deposition is a crime called perjury.

25 Do you understand that?

1 Lichtenstein

2 A Yes.

3 Q What is your date of birth?

4 A 2/3/1955.

5 Q What's your home address?

6 MR. LOCKINGER: Objection.

7 You can serve a subpoena
8 on us and we will accept it.

9 MR. HARMAN: Are you
10 directing him not to answer the
11 question?

12 MR. LOCKINGER: Yes.

13 Q To what address do you report to
14 work?

15 A I believe it's 1 Lefrak Plaza. I
16 don't know the exact address actually.

17 Q Are you currently employed?

18 A Yes.

19 Q Do you have multiple, are you
20 employed by multiple entities?

21 A Yes.

22 Q How many?

23 A Three.

24 Q Tell me about the first one.

25 A I work for the New York City

1 Lichtenstein

2 Police Department.

3 Q What's your job?

4 A I'm in charge of candidate
5 testing and civilian affairs.

6 Q What's your job title?

7 A I am deputy chief surgeon.

8 Q Is that a full-time job?

9 A No.

10 Q It's part time?

11 A Yes.

12 Q Does it have a certain amount of
13 hours associated with it? Are you required to
14 work certain hours?

15 A I think there's a minimum, but
16 there's no real time involved. It's as per the
17 needs of the department.

18 Q How long have you held that
19 title?

20 A December 5, 2001.

21 Q And were you appointed to that
22 position?

23 A Yes.

24 Q Who appointed you?

25 A I think it was Commissioner

1 Lichtenstein

2 Kerik.

3 Q Have you ever been disciplined by
4 the NYPD?

5 MR. LOCKINGER: Objection.

6 You can answer.

7 A No.

8 Q Have you ever had your pay taken
9 away?

10 A No.

11 Q Has your job status ever changed
12 since December of 2001?

13 MR. LOCKINGER: Objection.

14 You can answer.

15 A Yes.

16 Q Has it increased?

17 A Yes.

18 Q Have you ever received
19 performance evaluations?

20 A Yes.

21 Q When is the last time you
22 received a performance evaluation?

23 A I think they are either quarterly
24 or monthly. I'm not sure.

25 Q Have you gotten them on a regular

1 Lichtenstein

2 basis?

3 A I believe so.

4 Q Do you get a certain overall, how
5 do they rate your performance?

6 MR. LOCKINGER: Objection.

7 You can answer, if you
8 can.

9 A I don't know. I'm not sure.

10 Q Did you review them?

11 A No, I've always gotten good
12 recommendations, so I've never really reviewed
13 my performance status.

14 Q So you've never read the written
15 performance -- did you get written performance
16 evaluations?

17 A Yes.

18 Q And you chose not to read them?

19 A Yes.

20 Q Where are they now?

21 A I believe they are on file at the
22 medical division.

23 Q Is that a file that you control?

24 A No.

25 Q So when you are provided with a

1 Lichtenstein

2 copy of your evaluation, what have you done with
3 it?

4 A I don't think I have ever kept
5 it.

6 Q You just throw them away?

7 A I think so.

8 Q Are you under the influence of
9 alcohol?

10 A No.

11 Q Have you had anything to drink in
12 the last eight hours, alcohol?

13 A No.

14 Q Are you taking any medications?

15 A No.

16 Q Have you been prescribed any
17 medications that you have chosen not to take?

18 A No.

19 Q Can you think of any reason why
20 you can't give your best and truthful answers
21 here today?

22 A No.

23 Q Did anyone tell you to provide
24 dishonest answers here today?

25 A No.

1 Lichtenstein

2 Q What, if anything, did you do to
3 prepare for today's deposition?

4 A I met with the city corporation
5 counsel attorney.

6 Q Who is that?

7 A This gentleman to my left
8 (indicating).

9 Q Do you know his name?

10 A I'm sorry, no.

11 MR. HARMAN: So let the
12 record reflect that the witness
13 has gestured to Mr. Lockinger,
14 who is the attorney of record for
15 the department in this action.

16 Q When did you meet with the city
17 attorney?

18 A I believe we met, I believe we
19 met sometime last week. It could have been last
20 Wednesday or Thursday.

21 Q Where did that meeting take
22 place?

23 A At the city corp counsel
24 headquarters.

25 Q And was that in a private office?

1 Lichtenstein

2 A Yes.

3 Q Was anyone else present?

4 A Yes.

5 Q Who else was present?

6 A There was a representative from
7 the NYPD legal bureau.

8 Q An attorney?

9 A Yes.

10 Q What's that person's name?

11 A I don't have her name, but it's a
12 matter of record.

13 Q Had you met with her before?

14 A In other matters.

15 Q Not in this matter?

16 A No.

17 Q Was anyone else present?

18 A I don't believe so.

19 Q And how long did that meeting
20 take place?

21 A Three or four hours.

22 Q And did you look at any documents
23 during that meeting?

24 A No, I don't think I did.

25 Q Did you take any notes?

1 Lichtenstein

2 A No.

3 Q Did you listen to any recordings?

4 A No.

5 Q Did you watch any videos?

6 A No.

7 Q Did you call anyone on the phone?

8 A No.

9 Q And other than this three or
10 four-hour meeting with the city attorney and the
11 representative from the Police Department, did
12 you do anything else to prepare for your
13 deposition?

14 A No.

15 Q Do you maintain a file on Mr.
16 Umanzor?

17 A I do not.

18 Q Does the Police Department have a
19 file on Mr. Umanzor?

20 MR. LOCKINGER: Objection.

21 You can answer, if you
22 can.

23 A Yes, I believe they do.

24 Q When was the last time you
25 reviewed that file?

1 Lichtenstein

2 A I don't know.

3 Q Well, were you given a copy of
4 the subpoena summoning you to appear today for
5 your testimony?

6 A I don't believe so.

7 Q When did you first learn that you
8 were being deposed?

9 A I don't remember.

10 Q How did you learn?

11 A I was notified at first by the
12 chief surgeon's office, and then I was in
13 contact with a member of the legal bureau from
14 the department that I was going to have a
15 meeting with city corp counsel attorneys.

16 Q And that was the meeting that
17 took place you think last Wednesday?

18 A Yes.

19 Q And you didn't meet with the city
20 attorney before last Wednesday?

21 MR. LOCKINGER: Objection
22 to form.

23 You can answer.

24 A No.

25 Q Did you speak with him on the

1 Lichtenstein

2 phone?

3 MR. LOCKINGER: Objection.

4 You can answer.

5 A Since that conversation, yes.

6 Q Since the Wednesday conversation?

7 A Yes.

8 Q When you first learned, after you
9 learned that you were going to be meeting with
10 the city attorney providing testimony, did you
11 review Mr. Umanzor's file?

12 MR. LOCKINGER: Objection.

13 You can answer.

14 A I believe I did.

15 Q When was that?

16 A I don't remember.

17 Q Was it in the last couple of
18 months?

19 A Probably.

20 Q So tell me what you did to review
21 the file.

22 A I looked at his medical records
23 and reviewed his MRI report and his physician's
24 assessment.

25 Q Where is the file located?

Lichtenstein

MR. LOCKINGER: Objection.

You can answer.

A I believe it's at the medical
division.

Q Where is that?

A Lefrak Plaza.

Q What floor?

A Sixteenth floor.

Q Can you describe where you
located the file?

A I believe the file was brought to
me on my request to my office.

Q Who did you ask for the file?

A One of the civilian employees.

Q Do you remember that person's
name?

A No.

Q Who would you normally go to to
retrieve a file?

A I would request it from one of
the secretaries.

Q Who are the secretaries?

A I'm not good with names.

Q How many secretaries are there

1 Lichtenstein

2 that support you?

3 MR. LOCKINGER: Objection.

4 You can answer.

5 A Five.

6 Q You don't know any of their
7 names?

8 A No. I think one of them is named
9 Dawn, but I don't know any of their last names.

10 Q Is Dawn the one that retrieved
11 Mr. Umanzor's file?

12 A Probably.

13 Q Is she someone you go to more
14 frequently than others?

15 A She's the one I deal with most
16 often.

17 Q How old is Dawn?

18 A Thirty-five, thirty-six.

19 Q And Dawn or someone brought you
20 the file?

21 A Yes.

22 Q And what did you do then? You
23 said you looked at the MRI and doctor's
24 assessment.

25 After you did that, what did you

1 Lichtenstein

2 do?

3 A I don't understand the question.

4 Q Did you return the file?

5 A Yes.

6 Q Did you give it back to Dawn or
7 someone else?

8 A Yes.

9 Q Did you make a copy of it?

10 A No.

11 Q Did you take any notes?

12 A No.

13 Q Did you take pictures of it?

14 A No.

15 Q And you believe that you did that
16 after you were alerted that you were going to be
17 meeting with the city attorney?

18 MR. LOCKINGER: Objection.

19 You can answer.

20 A Yes.

21 Q Do you use e-mail for work?

22 A No.

23 Q Not at all?

24 A No.

25 Q Do you have any social media

1 Lichtenstein

2 accounts?

3 A Facebook.

4 Q What's your Facebook name?

5 A I think it's David Lichtenstein.

6 Q How about LinkedIn?

7 A No.

8 Q Any other social media accounts?

9 A Instagram.

10 Q You do have Instagram.

11 And what's your Instagram account

12 name?

13 A I think it's the same thing.

14 Q How frequently do you post on
15 Facebook?

16 A Maybe two or three times a week.

17 Q And how about Instagram?

18 A Maybe every three or four months.

19 Q Do you take pictures and post
20 them?

21 A Yes.

22 Q What types of things do you take
23 pictures of?

24 A My granddaughter.

25 Q So family and friends.

1 Lichtenstein

2 A Yes.

3 Q Do you ever post anything on
4 Instagram that is related to your medical
5 practice?

6 A No.

7 MR. LOCKINGER: Objection.

8 You can answer.

9 Q How about your job as the deputy
10 chief at the department?

11 A No.

12 Q How about on Facebook, do you
13 ever post anything related to your medical
14 practice?

15 A No.

16 Q Ever post anything related to
17 your role at the department?

18 A No -- I'll say no.

19 Q Who is the chief surgeon of the
20 department?

21 A Dr. Kleinman.

22 Q And what type of relationship
23 professionally do you have with Dr. Kleinman?

24 A He's my superior.

25 Q And how long has he been your

1 Lichtenstein

2 superior?

3 A Ten years, maybe 15 years.

4 Q Is the chief's position a
5 full-time role?

6 A Yes.

7 Q And have you ever discussed Mr.
8 Umanzor with Dr. Kleinman?

9 MR. LOCKINGER: Objection.

10 You can answer.

11 A I did apprise him that I was
12 going to be giving a deposition today.

13 Q And what, if anything, did he say
14 in response?

15 A Nothing.

16 Q So other than to alert him that
17 you were going to be engaged in this activity,
18 did you discuss Mr. Umanzor in any other way
19 with Dr. Kleinman?

20 A Not specifically, no.

21 Q Generally?

22 A It generally encompasses his
23 medical issue, not specifically this candidate
24 in question.

25 Q Tell me what medical issue, tell

1 Lichtenstein

2 me what you discussed related to his medical
3 issue.

4 MR. LOCKINGER: Objection.

5 You can answer.

6 A Our evaluation for certain
7 medical disorders is transitional and we have
8 talks from time to time about the changing
9 attitudes that we have in terms of qualification
10 and disqualification.

11 Q On how many occasions have you
12 discussed the transitional nature, I take it we
13 are talking about MS?

14 A No, a host of disorders, but MS
15 is one of them.

16 Q Other than MS, what are the other
17 disorders that are transitional medical issues
18 where attitudes are changing?

19 A Seizure disorder and hearing.

20 Q How many times in the last year
21 have you discussed the transitional nature of MS
22 and the changing attitudes?

23 MR. LOCKINGER: Objection.

24 You can answer.

25 A At least five or six times.

1 Lichtenstein

2 Q Tell me about the first one.

3 A I know we have had discussions
4 regarding the one or two persons with MS that we
5 qualified within the last year or two.

6 Q After appeal?

7 MR. LOCKINGER: Objection.

8 You can answer.

9 A I don't think that they were
10 appealed.

11 I think they were on review. I
12 don't think it ever went to an appeal.

13 In other words, if someone puts
14 down that they have multiple sclerosis, then
15 that would generate a review.

16 I believe in those two cases, at
17 least definitely in one case, the review found
18 that the candidate was qualified and it did not
19 go to an appeal.

20 I think I believe that both cases
21 did not go to an appeal, but I'm not 100 percent
22 sure.

23 Q Well, I asked you about those
24 cases and you said you believed that you had
25 offered testimony, correct?

1 Lichtenstein

2 MR. LOCKINGER: Objection.

3 You can answer.

4 A I don't believe I said that.

5 Q Perhaps I asked you that in the
6 context of referrals to neurologists and so I
7 apologize.

8 Let's go back to your discussion
9 with Dr. Kleinman.

10 You testified that you discussed
11 these two instances where candidates, and you
12 don't recall whether it was a candidate for the
13 department or a candidate for the program,
14 correct?

15 A Correct.

16 Q Where those individuals were
17 placed under review because they indicated that
18 they had been diagnosed with MS, correct?

19 A Yes.

20 Q And if anyone indicates that they
21 have been diagnosed with MS, they are
22 automatically placed under review?

23 MR. LOCKINGER: Objection.

24 You can answer.

25 A Yes.

1 Lichtenstein

2 Q Was Mr. Umanzor placed under
3 review?

4 A Yes.

5 Q And what did you say to Dr.
6 Kleinman about those two individuals that were
7 placed under review because of their MS?

8 A Well, our general discussion is
9 always the same, that we have to try to adhere
10 to the spirit of the Americans With Disabilities
11 Act.

12 Can the candidate do the job
13 today? And what supporting data do we have that
14 would suggest or give us doubt in that regard.

15 Q That was the nature of the
16 conversation?

17 A Those are the nature of
18 conversations in all of these cases.

19 Q And so tell me with respect to
20 those two individuals what Dr. Kleinman said.

21 A He thought that based on the
22 private medical records of those individuals and
23 the recommendation of the department
24 neurologist, my recommendation, that those two
25 candidates could be qualified.

1 Lichtenstein

2 Q Did you go to Dr. Kleinman for
3 final approval?

4 MR. HARMAN: Objection.

5 You can answer.

6 A No, it was more of a for your
7 information.

8 Q So you were seeking his advice?

9 A Yes.

10 Q So informal approval?

11 MR. LOCKINGER: Objection.

12 A Yes -- well --

13 Q But he doesn't have to sign off
14 on what you do?

15 A No.

16 Q And he supported your
17 determination in those two instances?

18 A Yes.

19 Q Did you discuss Mr. Umanzor with
20 him?

21 A Yes.

22 Q What did you say to him?

23 A I told him that this candidate
24 appeared to have intact neurological status with
25 no real deficiencies, but my concern was that

1 Lichtenstein

2 the time of his diagnosis to the time he was
3 applying for his position was too short.

4 Q Did you say anything else?

5 A No.

6 Q And what did he say in response?

7 A He reminded me that every case
8 has to be individually assessed and that was it.

9 MR. HARMAN: Can you read
10 back the answer?

11 (Whereupon, the record was
12 read back by the reporter.)

13 Q What was the time period?

14 MR. LOCKINGER: Objection.

15 A As I recall, it was less than a
16 year.

17 Q And what would have been a
18 satisfactory time period for you?

19 MR. LOCKINGER: Objection.

20 You can answer, if you
21 can.

22 A Actually in this case, because he
23 was going from cadet to police officer, I
24 probably would have been happy with two years,
25 because then it would have been another two

1 Lichtenstein

2 years of his college before, four years would
3 have gone by before he actually came up for his
4 new physical exam for his police officer status.

5 Q So as I understand that there are
6 different criteria for determining whether
7 someone can be a cadet as opposed to whether
8 someone can be a police officer?

9 MR. LOCKINGER: Objection.

10 You can answer, if you
11 can.

12 A Technically, yes, in a real
13 sense, no.

14 We are entering into a contract
15 with them that they are going to become police
16 officers.

17 Technically, at the time that we
18 enter into that contract, they're not going to
19 the academy, they're not expected to make
20 arrests, they're not given a firearm.

21 Q But you have testified that you
22 applied different standards to assessing whether
23 someone was qualified to be a cadet?

24 MR. LOCKINGER: Objection.

25 A That's not exactly correct.

1 Lichtenstein

2 Q Well, you said that because he
3 was applying to be a cadet, you would have been
4 happy with two years, because by the time he
5 applied to be a police officer, the period would
6 be longer than two years, correct?

7 A Correct.

8 Q More in the range of that three
9 to five that you testified earlier that you
10 found acceptable?

11 A Correct.

12 Q And you have testified that as a
13 cadet you don't make arrests?

14 MR. LOCKINGER: Objection.

15 A Correct.

16 Q And you don't go to the academy?

17 A I don't know. I don't believe
18 they enter into formal academy training.

19 Q But you're not sure?

20 A They may have some academics that
21 they -- I'm not exactly sure.

22 Q You have testified that cadets
23 don't make arrests, correct?

24 A Correct.

25 Q Do cadets have to control civil

1 Lichtenstein

2 disorder?

3 MR. LOCKINGER: Objection.

4 You can answer.

5 A As far as I know, the answer is
6 no.

7 Q Do cadets have to collect and
8 preserve evidence?

9 A No.

10 Q Do cadets have to assess a crime
11 scene?

12 A No.

13 Q Do cadets have to operate
14 vehicles?

15 MR. LOCKINGER: Objection.

16 You can answer.

17 A I don't know.

18 Q Do cadets have to arrest DWI
19 suspects?

20 MR. LOCKINGER: Objection.

21 You can answer.

22 A They do not.

23 Q Do cadets have to participate in
24 disaster control?

25 MR. LOCKINGER: Objection.

1 Lichtenstein

2 A I don't know.

3 Q Do cadets have to provide
4 emergency medical assistance as part of their
5 job duties?

6 MR. LOCKINGER: Objection.

7 A I don't know.

8 Q Do cadets have to interview and
9 interrogate suspects?

10 MR. LOCKINGER: Objection.

11 A They do not.

12 Q Do cadets have to engage in motor
13 vehicle accident prevention?

14 MR. LOCKINGER: Objection.

15 A I believe not.

16 Q Are cadets placed on patrol?

17 MR. LOCKINGER: Objection.

18 A I believe not.

19 Q Do cadets have to search for and
20 seize evidence?

21 MR. LOCKINGER: Objection.

22 A They do not.

23 Q Do cadets have to use deadly
24 force?

25 MR. LOCKINGER: Objection.

1 Lichtenstein

2 A They do not.

3 Q Do cadets have to respond and
4 investigate crimes?

5 MR. LOCKINGER: Objection.

6 A They do not.

7 MR. HARMAN: We have been
8 going about an hour. Let's take
9 a five-minute break.

10 (Whereupon, at 12:19 p.m., a
11 recess was taken.)

12 (Whereupon, at 12:30 p.m.,
13 the deposition resumed with all
14 parties present.)

15 MR. HARMAN: Back on the
16 record.

17 BY MR. HARMAN:

18 Q You testified earlier that you
19 placed two individuals who were candidates under
20 review who had identified themselves as having
21 been diagnosed with MS; is that correct?

22 A Yes.

23 Q Do you recall whether those were
24 candidates for the department or the program?

25 A I believe --

Lichtenstein

MR. LOCKINGER: Objection.

You can answer.

A I believe they were for the
department.

Q And you also testified that you
placed Mr. Umanzor's file under review as well;
is that correct?

A Yes.

Q In the last five years, how many
files have you placed under review because the
candidates identified themselves as having been
diagnosed with MS?

MR. LOCKINGER: Objection.

You can answer, if you
can.

A It will be a guess. It will be
an estimate.

I would say ten.

Q And we talked about three of them
and we will talk a lot more about Mr. Umanzor.

Of the ten, we know Mr. Umanzor
was a candidate for the cadet program, he was an
applicant for the cadet program, correct?

A Yes.

1 Lichtenstein

2 Q Were any of the ten applicants to
3 the cadet program?

4 A I don't think so. I think they
5 were all police officer candidates.

6 Q So other than Mr. Umanzor, can
7 you think of any instances in which you just
8 disqualified someone from the cadet program
9 because of MS?

10 A No.

11 Q And going back to your
12 conversation with Dr. Kleinman, you testified
13 that you believed that Mr. Umanzor had not been
14 asymptomatic for a long enough period of time;
15 is that correct?

16 MR. LOCKINGER: Objection.

17 You can answer.

18 A In my opinion.

19 Q Did he offer an opinion?

20 A No.

21 Q By the way, as you sit here
22 today, do you stand by your determination that
23 Mr. Umanzor should have been disqualified from
24 the cadet program?

25 MR. LOCKINGER: Objection.

1 Lichtenstein

2 You can answer.

3 A At the time he presented for his
4 application?

5 Q Yes.

6 A Yes.

7 Q And what about as you sit here
8 today?

9 MR. LOCKINGER: Objection.

10 You can answer.

11 A I'm sorry?

12 Q What about as you sit here today?

13 A In other words, would I consider
14 his application today?

15 Q As you sit here today has your
16 opinion changed?

17 MR. LOCKINGER: Objection.

18 You can answer.

19 A If he's been asymptomatic since
20 his application, if he has been tolerating his
21 medication with no problems, I would qualify him
22 today.

23 Q You would qualify him today?

24 MR. LOCKINGER: Objection.

25 You can answer.

1 Lichtenstein

2 A Probably, based on his medical
3 data.

4 Q If he had been taking his
5 medication and he was asymptomatic?

6 A And he has a clearance letter
7 from his neurologist, yes.

8 Q Well, isn't it true he had a
9 clearance letter from his neurologist?

10 A Yes and no.

11 He had a clearance letter, but it
12 was not a detailed examination that supported
13 his application.

14 Q Do you know the name of his
15 neurologist?

16 A I don't remember.

17 Q Did you ever contact his
18 neurologist?

19 A I did not.

20 Q Did you ask for additional
21 information from his neurologist?

22 A No.

23 Q And in the paperwork that you
24 reviewed from his neurologist, did his
25 neurologist indicate that he was medically

1 Lichtenstein

2 cleared to be a cadet?

3 MR. LOCKINGER: Objection.

4 A Yes.

5 Q And then you determined that the
6 submission from the doctor was not detailed
7 enough to support the application?

8 A No.

9 I -- actually, I did feel that
10 his clearance note was sufficient.

11 MR. HARMAN: Can you read
12 back not the last response, but
13 the one prior to that?

14 (Whereupon, the record was
15 read back by the reporter.)

16 Q What do you mean by that?

17 A Just as I stated yes and no, yes,
18 I felt that in this case with his medical
19 documentation that was a sufficient medical
20 clearance letter.

21 No, it wasn't the kind of letter
22 that I usually like to see in terms of
23 overturning this kind of diagnosis.

24 I would have liked to have seen a
25 more detailed examination, but based on his

1 Lichtenstein

2 medical records that were otherwise provided, I
3 thought that the medical letter that was
4 supplied was sufficient enough to have him
5 qualified.

6 Q But you disqualified him?

7 A Correct.

8 Q But the letter on its face was
9 sufficient to qualify him?

10 A Yes.

11 Q But you didn't believe it was
12 detailed enough?

13 A That's not what I -- I know --

14 Q I'm sorry. I'm not really trying
15 to argue with you, so you believed it was
16 sufficient to qualify him, but you would have
17 preferred to see something more detailed?

18 A Yes.

19 Q But you didn't ask for something
20 more detailed?

21 A No, because the letter wasn't my
22 issue.

23 Q What was your issue?

24 A My only issue with this candidate
25 was the brevity of his medical history with this

1 Lichtenstein

2 diagnosis to his time of application.

3 I felt that the time period was
4 too short.

5 Q And what was the time period?

6 A I believed from his diagnosis and
7 treatment to the time of his application was
8 less than a year, eight or nine months, I
9 believe.

10 Q And is there a policy that the
11 cadet program has with respect to how many
12 months you need to be asymptomatic?

13 MR. LOCKINGER: Objection.

14 Answer if you can.

15 A There is no set policy that I
16 know of.

17 Q And how about at the Police
18 Department? How about at the Police Department?

19 MR. LOCKINGER: Objection.

20 Q Is there a policy that you need
21 to be asymptomatic for any specific period of
22 time?

23 A No, there is not.

24 Q Was Mr. Umanzor entitled to
25 appeal your decision?

1 Lichtenstein

2 MR. LOCKINGER: Objection.

3 You can answer, if you
4 can.

5 A I'm not sure.

6 That's my answer. I'm not sure.

7 Q You testified that you determined
8 that eight or nine months, your testimony is
9 that you determined that eight or nine months
10 wasn't a long enough period of time to be
11 asymptomatic, but that was not based on a policy
12 or procedure of the department, correct?

13 A Yes.

14 Q And that was not based on a
15 policy or procedure of the cadet program,
16 correct?

17 A Yes.

18 Q Was it based on any research that
19 you had conducted?

20 MR. LOCKINGER: Objection.

21 You can answer.

22 A Once again, I don't want to get
23 into an argument. I just don't want to
24 misspeak.

25 Research in terms of reading up

1 Lichtenstein

2 on the medical disorder or research in clinical
3 trials?

4 Q Any clinical research.

5 A As far as the literature that I
6 reviewed, I felt that in this case not enough
7 time period had gone by from his diagnosis to
8 his time of application that I could make a
9 reasonable assessment of how he was going to do
10 from the time he signed his contract.

11 Q And what research did you review?

12 MR. LOCKINGER: Objection.

13 You can answer, if you
14 can.

15 A I believe I referenced Harrison's
16 Internal Medicine, and I also, I've also looked
17 at some literature from the American Journal of
18 Radiology in terms of his MRI findings.

19 Q Anything else?

20 A I believe I also referenced the
21 Journal of Clinical Neurology in MS trends.

22 Q Anything else?

23 A I believe that I also had an
24 informal conversation with the department
25 neurologist, but there were no notes taken at

1 Lichtenstein

2 that time.

3 Q Anything else?

4 A Not that I can remember at this
5 time.

6 Q And is it your testimony that you
7 reviewed these resources to make the
8 determination to disqualify Mr. Umanzor from the
9 cadet program?

10 MR. LOCKINGER: Objection.

11 You can answer.

12 A Yes.

13 Q Do you own a copy of Harrison's
14 Internal Medicine?

15 A Yes.

16 Q Where is it located?

17 A It's in my office.

18 Q Is it a hard copy book?

19 A Yes.

20 Q How long have you owned it?

21 A I just got the new edition about
22 two or three months ago.

23 Q What edition did you look at to
24 make this determination?

25 MR. LOCKINGER: Objection.

1 Lichtenstein

2 You can answer, if you
3 can.

4 A The 17th or the 18th edition.

5 Q What, if anything, did you do
6 with the older edition when you got the new one
7 a few months ago?

8 A I still think I have an older
9 edition at the medical division at Lefrak.

10 Q So you have two editions?

11 A Probably three.

12 Q And do you know which one you
13 looked at?

14 A I'm pretty sure I looked at my
15 newest edition.

16 Q The one that you got in the last
17 two months?

18 MR. LOCKINGER: Objection.

19 A Yes.

20 MR. HARMAN: I'm going to
21 call for the production of those
22 portions of Harrison's Internal
23 Medicine that you reviewed to
24 make the determination to
25 disqualify Mr. Umanzor from the

1 Lichtenstein

2 cadet program.

3 Q What is the American Journal of
4 Radiology?

5 A It was a -- it was a website that
6 when I was -- I did a web search to see if there
7 were any new trends in MS and overall prediction
8 rates in the short term for his specific type of
9 MS.

10 So I remember doing a Google
11 search and looking at several, at least four or
12 five hits that I got on my Google search.

13 Q By the way, did you put any of
14 these resources into your, into Mr. Umanzor's
15 file?

16 A No.

17 Q Where did you perform this Google
18 search?

19 A When or where?

20 Q Where?

21 A At one of my other jobs. I try
22 not to use the department computers because they
23 are just horribly slow, so at one of my other
24 employment areas I have to be on line a lot as
25 part of my job and I research those sites on my

1 Lichtenstein

2 computer.

3 Q How are you compensated? I'm not
4 asking about your rate of pay, but how are you
5 compensated for your job at the department?

6 A Salary.

7 Q You don't get paid by the hour?

8 A No.

9 Q Do you get paid extra for
10 appearing at the deposition today?

11 A No.

12 Q So you consider this a part of
13 your job responsibilities with the department?

14 MR. LOCKINGER: Objection.

15 A Yes.

16 Q So the American Journal of
17 Radiology was a website that you went to?

18 A I know, as I said, I went to
19 several websites. One of them was a
20 radiological journal, because there were
21 specific mentions of lesions that this gentleman
22 had when he was diagnosed on his MRI, and just
23 looking to see if there were any new findings
24 that should come into my determination of
25 whether or not we could reasonably assess his

1 Lichtenstein

2 availability for the job.

3 Q Now, earlier you mentioned Mr.
4 Umanzor's type of MS.

5 What did you mean by that?

6 A He has the most common type, it's
7 relapsing/remitting. I believe 85 percent of
8 people with MS have relapsing/remitting.

9 Q Is that a progressive condition?

10 A MS by definition is a progressive
11 neurological disorder, but people with
12 relapsing/remitting may do very well and not
13 progress for decades.

14 Q And do you know what percentage
15 of people with relapsing/remitting MS will do
16 well for decades?

17 A The last time I checked the CDC
18 website, Center For Disease Control, the
19 majority of people who are diagnosed in their
20 20s will have a partial or full disability
21 within 15 or 20 years.

22 Q And did that factor into your
23 decision to disqualify Mr. Umanzor from the
24 cadet program?

25 MR. LOCKINGER: Objection.

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Lichtenstein

You can answer.

A If anything, it prejudiced me to hire him. But the one factor that I found in all my research was that it was impossible to make a diagnosis in the short term of how someone is going to do with their MS, a period of time has to go by.

There is no reliable way, there are no good or bad prognostic indicators that can tell you within a short period of time who is going to be, who is going to do well with their medication and be asymptomatic for a period of years.

Q So the period of time you're referring to is the period of time during which an individual is asymptomatic, correct?

A From their first attack.

Q From their first attack.

And it's your belief that Mr. Umanzor was asymptomatic for eight or nine months, correct?

MR. LOCKINGER: Objection.

You can answer.

A Yes.

Lichtenstein

Q And did the Harrison's Internal Medicine treatise, is it fair to call it a treatise, let's just call it Harrison's Internal Medicine, did that prescribe an appropriate time period during which someone has not relapsed as an indicator for someone's future with MS?

A There is no specific medical data to prescribe a length of time.

The overall thrust of all the medical data is, at this time with multiple sclerosis, the prediction rate has to do with the longitude of the asymptomatic period.

So that if people within a short period, within three years, and I say three years, it could be within five years, are on the medication and not having exacerbations of their disease, the statistical chance of them going for long periods with no disabilities is very high.

If on the other hand they start having exacerbations within a short period of time, within a three to five-year time period, then some of those persons are reclassified as having progressive relapsing disease, which

1 Lichtenstein

2 occurs in about 25 percent, and those persons
3 have a much poorer prognosis.

4 Q Is there any indication in Mr.
5 Umanzor's file that he had progressive relapsing
6 disease?

7 A No.

8 Q I'm going to ask my question
9 again.

10 Did Harrison's Internal Medicine
11 indicate an amount of years that should pass
12 during which someone was asymptomatic in order
13 to make a prognosis about their long-term future
14 with the disease?

15 MR. LOCKINGER: Objection.

16 You can answer.

17 Q It either did or did not.

18 A It did not.

19 Q How about the American Journal of
20 Radiology, the website that you went to, did it
21 prescribe a number of years that you needed to
22 wait?

23 MR. LOCKINGER: Objection.

24 A The American Journal of Radiology
25 web search was about the lesions and possible

1 Lichtenstein

2 prognostic factors.

3 Q Okay. But it didn't prescribe a
4 number of years that you should wait?

5 A It did not.

6 Q How about the clinical neurology
7 resource concerning MS trends, did it indicate a
8 number of years that needed to pass where
9 someone was asymptomatic?

10 A No.

11 Q How about during your
12 conversation with the neurologist, do you recall
13 a specific conversation with the department's
14 neurologist related to Mr. Umanzor?

15 A No, I do not.

16 Q As you sit here today, you are
17 not sure whether you went to the neurologist to
18 have a discussion?

19 A I know we have been having a lot
20 of conversations about MS as an issue, because
21 we are in transition on how we evaluate these
22 patients.

23 Q I'm just asking, and you have
24 testified to that and I understand, but I'm
25 asking about as part of the review process, you

1 Lichtenstein

2 placed Mr. Umanzor's file under review, right?

3 A Yes.

4 Q And as part of that process, did
5 you go to the department neurologist and have a
6 discussion about Mr. Umanzor's file?

7 A I can't recall exactly, so I will
8 say no.

9 Q What does the review process
10 entail?

11 MR. LOCKINGER: Objection.

12 You can answer.

13 A Generally speaking, after I've
14 disqualified somebody, they can request a
15 review, and at which point it's their
16 responsibility to submit new medical data and at
17 one point I will review that medical data and if
18 I have found that there is convincing medical
19 evidence, then I will qualify that person, or if
20 I still have questions, then I will either refer
21 it to a department specialist or I'll refer it
22 to the chief surgeon.

23 Q Did Mr. Umanzor request that his
24 file be reviewed?

25 MR. LOCKINGER: Objection.

1 Lichtenstein

2 You can answer.

3 A There is a vague quality to his
4 application, because it's not police officer,
5 and I know there is an orderly transition for
6 review with police officer candidates.

7 I'm not sure about cadets.

8 Q Are you sure that his file was
9 placed under review?

10 MR. LOCKINGER: Objection.

11 A I don't know.

12 Q But earlier you testified that it
13 was, on numerous occasions.

14 So let's make the record clear.

15 You don't know?

16 A I don't know. I don't know. I
17 misspoke.

18 Q And you don't have any
19 recollection of discussing Mr. Umanzor's file
20 with the neurologist.

21 Do you recall discussing Mr.
22 Umanzor's file with the chief surgeon?

23 MR. LOCKINGER: Objection.

24 You can answer.

25 Q I'm not talking about in general,

1 Lichtenstein

2 I'm talking about did you take Mr. Umanzor's
3 file to the chief surgeon and say, "I want to
4 talk about this case"?

5 A No.

6 Q And did you seek any new evidence
7 related to the evaluation of Mr. Umanzor's file?

8 MR. LOCKINGER: Objection.

9 You can answer, if you
10 can.

11 A I did some medical research on my
12 own to see if there were any new findings in his
13 favor, and I did not.

14 Q Did you ask him for any
15 additional documentation?

16 A No.

17 Q Did you seek any additional
18 documentation from his doctors?

19 A No.

20 Q You identified three types of
21 employment.

22 Can you tell me about the second
23 one. You've talked extensively about your role
24 at the department.

25 Can you tell me about the second

1 Lichtenstein

2 category of employment?

3 A I am a medical instructor and an
4 associate professor in medicine for a few
5 osteopathic medical schools.

6 I'm not an osteopath, but I am
7 employed as a medical trainer and I have a
8 part-time position at St. John's Hospital in Far
9 Rockaway to teach internal medicine to the
10 osteopathic residents there.

11 Q What's osteopathology? I don't
12 know, I'm just asking.

13 A I have no clue either.

14 Q And this is an osteopathic
15 program and you are a medical trainer at the
16 program?

17 A Correct.

18 Q And what type of training do you
19 provide?

20 A I run morning report, which is
21 one to two hours where all the cases that were
22 admitted the night before are discussed, and I
23 lecture on each medical case and provide advice
24 on how to proceed with those cases.

25 Q And is there, so are these cases

1 Lichtenstein

2 that come into the hospital?

3 A Yes.

4 Q So it's a teaching hospital?

5 A Yes.

6 Q And are you assigned to specific
7 kinds of cases or do you evaluate any case?

8 A Any case.

9 Q And are you part of a team that
10 is evaluating individuals, or are you --

11 A I'm an independent contractor.

12 Q And what's the third job?

13 A I am the director of medicine at
14 an HMO in Long Island called Age Well.

15 Q What does that job entail?

16 A I oversee medical necessity and I
17 write policy.

18 It's a startup company. It's
19 been in business for two or three years.

20 Q Do you have office hours?

21 A Yes.

22 Q So there is the Police
23 Department, there is the St. John's teaching
24 hospital and there is Age Well.

25 Do you have a fourth job?

1 Lichtenstein

2 A I'm in the process of retiring
3 from my medical practice.

4 Q Are you still seeing patients?

5 A Yes, but that's going to end in
6 another week or two.

7 Q Do you have an office?

8 A Yes.

9 Q When is the last time you saw a
10 patient?

11 A A week ago.

12 Q When do you plan on shutting your
13 office down?

14 MR. LOCKINGER: Objection.
15 You can answer, if you
16 can.

17 A Hopefully this Thursday.

18 Q Why have you decided to retire
19 from your medical practice?

20 MR. LOCKINGER: Objection.
21 Answer if you can.

22 A It's financially very difficult
23 to run a medical practice today, especially as a
24 solo practitioner.

25 Q And you are a solo practitioner?

1 Lichtenstein

2 A Yes.

3 Q Is there any other reason other
4 than economics why you decided to retire at this
5 time from your medical practice?

6 MR. LOCKINGER: Objection.

7 You can answer.

8 A Purely economics.

9 Q You are in good standing with the
10 medical licensing authority?

11 A Yes.

12 Q Have you ever been disciplined
13 with respect to your medical license?

14 MR. LOCKINGER: Objection.

15 You can answer.

16 A No.

17 Q I'm handing you what has been
18 marked as Plaintiff's Exhibit 1.

19 Please take a look at it
20 (handing).

21 A (Perusing document.) Okay.

22 Q Do you recognize this?

23 A No.

24 Q Is that your name?

25 A Yes.

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Lichtenstein

MR. HARMAN: And for the
record, this is a one-page
document. It's a printout from a
website.

Q Is this your work address, 12105
Rockaway Beach Boulevard, is that one of your
work addresses?

A That was an old office address
from I believe ten years ago.

Q And drawing your attention down
to this text that begins, "He runs a horrible
practice."

Have you ever read that before?

A No.

Q And you are not familiar with
this website?

A No.

Q And I'm handing you what has been
marked as Plaintiff's Exhibit 2.

Please take a look at it
(handing).

A (Perusing document.) Okay.

Q Do you recognize this?

A No.

1 Lichtenstein

2 Q Is that your name?

3 A Yes.

4 Q Is that your picture?

5 A No.

6 Q That's not you?

7 A That's not me.

8 Q Drawing your attention down to
9 where it says, "Dr. Lichtenstein's experience,"
10 do you recognize any of those as being those
11 that you are experienced in -- withdrawn.

12 Have you ever officed at 431
13 Beach 129th Street?

14 A That's my current office address.

15 Q That's your current office
16 address, but this is not a picture of you?

17 A Correct.

18 Q Do you recognize this person?

19 A No.

20 Q Did you ever make the statement,
21 "I care about philosophy"?

22 A I can't answer that question.

23 MR. LOCKINGER: Objection.

24 Q Is your specialty internal
25 medicine?

1 Lichtenstein

2 A Yes.

3 Q Do you treat abdominal pain?

4 A Yes.

5 Q Anemia?

6 A Yes.

7 Q I'm handing you what has been
8 marked as Plaintiff's Exhibit 3 (handing).

9 Please take a look at it.

10 A (Perusing document.) Isn't it
11 the same thing?

12 Q It's not, actually. Take a
13 moment to look at it and I have some quick
14 questions about it.

15 A (Perusing document.)

16 Q If you take a look at Page 1,
17 beginning with procedures, and then move on to
18 conditions on the second page, and I'll have a
19 couple of questions.

20 A (Perusing document.) Okay.

21 Q First of all, do you recognize
22 this as, this document, not the actual document,
23 but do you know what this was printed from?

24 MR. LOCKINGER: Objection.

25 You can answer, if you

1 Lichtenstein

2 can.

3 A No.

4 Q And drawing your attention down
5 to the section that begins "Procedures."

6 Have you had an opportunity to
7 review those procedures?

8 A Just now.

9 Q And are those procedures that you
10 perform?

11 A No.

12 Q So this is not accurate?

13 A Correct.

14 Q And how about the second page
15 where it says, "Conditions," do you see that
16 there?

17 A (Perusing document.) Yes.

18 Q Are those conditions you treat?

19 MR. LOCKINGER: Objection.

20 You can answer.

21 A I can answer your question.

22 Q Sure. I'm just asking if you
23 treat these conditions?

24 A I believe because there is a
25 gastroenterologist across the hallway that they

1 Lichtenstein
2 have mixed up our two practices, because these
3 are all, all of these diagnoses, they are all
4 associated with things that a gastroenterologist
5 would treat.

6 Q So this is not accurate?

7 A Correct.

8 Q Did you go to, did you go to the
9 City University of New York?

10 A No.

11 Q Did you go to Harvard?

12 A No.

13 Q So it's clearly not accurate.

14 I'm handing you what has been
15 marked as Plaintiff's Exhibit 4 (handing).

16 Please take a look at it.

17 A (Perusing document.) Okay.

18 Q Do you recognize this document?

19 A Yes.

20 Q What is it?

21 A I mean, I don't recognize it.

22 I'm looking at it.

23 Q Do you know what Health Grove is?

24 A No.

25 Q Is that your name?

1 Lichtenstein

2 A Yes.

3 Q And you office at 431 Beach 129th
4 Street?

5 A That's my address.

6 Q And is your phone number
7 (718) 318-3434?

8 A Yes.

9 Q And have you had 31 years of
10 experience in the medical profession?

11 A Yes.

12 Q And is your primary specialty
13 internal medicine?

14 A Yes.

15 Q And did you go to Icahn School of
16 Medicine?

17 Where did you go to medical
18 school?

19 A I initially started medical
20 school in Mexico and I transferred to Mount
21 Sinai for my last two years.

22 Q Where in Mexico?

23 A Tampico.

24 Q Why did you leave the school in
25 Mexico and come to the United States?

1 Lichtenstein

2 MR. LOCKINGER: Objection.

3 You can answer, if you
4 can.

5 A Because I did like way better on
6 my test scores.

7 Q Is that why you went to, started
8 medical school in Mexico because of your test
9 scores?

10 A Yes.

11 Q Did you get into medical school
12 in the United States?

13 A Yes.

14 Q Why didn't you attend that
15 medical school?

16 A No, I mean I got in --

17 Q Before you went to medical school
18 in Mexico, did you get into a medical school in
19 the United States?

20 A No.

21 Q There's some data over there. It
22 says, "Dr. Lichtenstein billed Medicare a total
23 of \$391,000."

24 Do you see that there on the
25 second page?

1 Lichtenstein

2 A (Perusing document.) Yes.

3 Q Does that data appear to be
4 accurate?

5 MR. LOCKINGER: Objection.

6 Answer if you can.

7 A I don't know.

8 Q I asked you earlier about whether
9 Mr. Umanzor was entitled to appeal your decision
10 and you said you didn't know.

11 Do you really not know whether he
12 is entitled to appeal your decision?

13 MR. LOCKINGER: Objection.

14 A I believe he is. I don't know
15 for certain.

16 Q What leads you to believe, what
17 prevents you from being certain?

18 MR. LOCKINGER: Objection.

19 A I'm more knowledgeable about the
20 appeals process with police officers.

21 I really haven't disqualified
22 that many cadets to know exactly what the
23 appeals process is.

24 Q Are you confident that a
25 candidate or an applicant to the department

1 Lichtenstein

2 would have the opportunity to appeal an adverse
3 decision that you made disqualifying them from
4 being a police officer?

5 MR. LOCKINGER: Objection.

6 You can answer.

7 A Yes.

8 Q And is that written down in
9 policies and procedures somewhere?

10 MR. LOCKINGER: Objection.

11 You can answer, if you
12 can.

13 A I believe so.

14 Q And are there separate policies
15 and procedures for the cadet program?

16 MR. LOCKINGER: Objection.

17 You can answer, if you
18 can.

19 A That's why I say I don't know. I
20 don't know.

21 I assume it's the same, but it
22 could be different.

23 Q And you testified earlier that
24 you were the ultimate authority on the decision
25 to disqualify someone from the cadet program,

1 Lichtenstein

2 correct?

3 MR. LOCKINGER: Objection.

4 You can answer.

5 A Yes.

6 Q I'm handing you what has been
7 marked as Plaintiff's Exhibit 5 (handing).

8 Please take a look at it.

9 A (Perusing document.) Okay.

10 Q Do you recognize this document?

11 A No.

12 Q But that's your address?

13 A Yes.

14 Q And the affiliation is accurate,
15 St. John's?

16 A Well, they left out Lenox Hill
17 Hospital.

18 Q So you're affiliated with Lenox
19 Hill and St. John's?

20 A Yes.

21 Q Are you affiliated with any other
22 hospital?

23 A Not any longer.

24 Q I'm handing you what has been
25 marked as Plaintiff's Exhibit 6 (handing).

1 Lichtenstein

2 Please take a look at it.

3 A (Perusing document.) Okay.

4 Q Do you recognize this document?

5 A I don't think I have actually
6 seen this document.

7 Q Okay.

8 Have you ever read a complaint in
9 a lawsuit before?

10 MR. LOCKINGER: Objection.

11 A Yes.

12 Q So you know what they look like?

13 A Yes.

14 Q Did you read the complaint in the
15 matters that you were a defendant in, the
16 malpractice claims?

17 MR. LOCKINGER: Objection.

18 Answer if you can.

19 A Yes.

20 Q But you didn't read this
21 complaint?

22 A I don't believe I have seen this
23 document (indicating).

24 Q I'm handing you what has been
25 marked as Plaintiff's 7 (handing).

1 Lichtenstein

2 Please take a look at it.

3 A (Perusing document.) Okay.

4 Q Do you recognize this document?

5 A Yes.

6 Q What is it?

7 A It's one of the malpractice cases
8 that I referenced before.

9 Q And in the caption at the top of
10 the page where it says, "David Lichtenstein,
11 M.D., and David Lichtenstein, Physician, PC," is
12 that you and your entity?

13 A Yes.

14 Q And are you the sole owner of
15 David Lichtenstein Physician, PC?

16 A Yes.

17 Q And is that still an active
18 corporation in the State of New York?

19 A Yes.

20 Q And right there at the bottom it
21 says, "David Lichtenstein, MD, defendant, pro
22 se."

23 Did you eventually obtain
24 attorneys in this case?

25 A Yes.

1 Lichtenstein

2 Q Do you know who your attorneys
3 were for this matter?

4 A They were assigned by the
5 malpractice company.

6 Q And that's the same malpractice
7 carrier that you referred to earlier?

8 A In this case, yes.

9 Q I'm handing you what has been
10 marked as Plaintiff's Exhibit 8 (handing).

11 Please take a look at it.

12 A (Perusing document.)

13 Q Do you recognize this document?

14 MR. LOCKINGER: Objection.

15 Answer if you can.

16 A I don't recall this document.

17 Q Do you know who Sanford
18 Lindenbaum is?

19 MR. LOCKINGER: Objection.

20 Answer if you can.

21 A No.

22 Q Turn your attention, if your
23 will, to the second to the last page.

24 A (Perusing document.) Okay.

25 Q Do you see where it says, "Yours

1 Lichtenstein

2 et cetera"?

3 A Yes.

4 Q And do you see a name below that
5 in bold, I mean in all caps?

6 A Yes.

7 Q Do you recognize any of those
8 names?

9 A (Perusing document.) It appears
10 that one of them was my attorney for this
11 action.

12 Q Who was your attorney for this
13 action?

14 A It says Sanford R. Lindenbaum.

15 Q And do you have any reason to
16 believe that he was not your attorney for this
17 action?

18 A I assume he was.

19 Q Other than being your attorney
20 for this action, do you have any other
21 relationship with Mr. Lindenbaum?

22 A No.

23 Q And he was chosen by your
24 malpractice carrier?

25 A Yes.

1 Lichtenstein

2 Q I'm handing you Plaintiff's
3 Exhibit 9 (handing).

4 Please take a look at it.

5 A (Perusing document.) Okay.

6 Q Do you recognize this document?

7 MR. LOCKINGER: Objection.

8 Answer if you can.

9 A No.

10 Q Drawing your attention down to
11 Paragraph 3, No. 3, could you please read that
12 paragraph? You don't have to read it out loud.
13 Just read it to yourself.

14 A Okay.

15 Q It goes on to the next page.

16 A (Perusing document.)

17 Q Taking a step back, tell me when
18 you're ready.

19 A I'm ready.

20 Q The plaintiffs in this case are
21 Robert London and Ann London.

22 Is that you as the defendant?

23 A Yes.

24 Q And is that your entity?

25 A Yes.

1 Lichtenstein

2 Q And having read Paragraph 3 in
3 this document entitled "Verified Bill Of
4 Particulars," do you have any reason to believe
5 that does not describe the claims that were
6 brought against you in the London matter?

7 MR. LOCKINGER: Objection.

8 You can answer.

9 A No.

10 Q I'm handing you Plaintiff's
11 Exhibit 10 (handing).

12 Please take a look at it.

13 A (Perusing document.) Okay.

14 Q This also involves the London
15 matter, but it's an amended document.

16 Do you know why the bill of
17 particulars was amended in this case?

18 MR. LOCKINGER: Objection.

19 You can answer.

20 A I don't remember.

21 Q If you'd just take the time to
22 read Paragraph 3 again.

23 A (Perusing document.) Okay.

24 Q Do you have any reason to believe
25 that this still doesn't accurately reflect the

1 Lichtenstein

2 claims that were brought against you by the
3 London plaintiffs?

4 MR. LOCKINGER: Objection.

5 You can answer.

6 A This reflects accurately the
7 claims.

8 Q And drawing your attention to the
9 second page, seven lines down, would you agree
10 that one of the allegations that the Londons
11 made against you was you failed to properly take
12 and/or document the patient's history.

13 Would you agree with that?

14 A Yes.

15 Q And that you failed to take heed
16 of and appreciate the significance of the
17 patient's history?

18 A Yes.

19 Q Would you agree that that's what
20 it says?

21 A Yes.

22 Q And a few more lines down, would
23 you also agree that it says that you failed to
24 take heed of and appreciate the significance of
25 the patient's signs and symptoms or signs,

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Lichtenstein

symptoms?

MR. LOCKINGER: Objection.

A Yes.

Q And having read the rest of this paragraph, do you see anything in here that you don't recognize as the claims that were brought against you by the Londons?

MR. LOCKINGER: Objection.

You can answer, if you can.

A No, it appears accurate.

Q And was the London matter resolved?

A It was settled.

Q And did you make a cash payment as part of the settlement?

A Yes.

Q And were you, did anyone else contribute to the pool of money that was paid as part of the London matter?

MR. LOCKINGER: Objection.

Answer if you can.

A No.

Q You were the only person that

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paid.

The insurance carrier didn't
contribute any money to the settlement?

A No, they paid the settlement.

Q They paid the settlement.

I'm handing you what has been
marked as Plaintiff's Exhibit 11 (handing).

Please take a look at it.

A (Perusing document.) Okay.

Q Do you recognize this document?

A Yes.

Q What is it?

A It is a relatively new guideline
from New York State for the assessment of the
fitness standards for peace officers.

Q Does this document apply to
cadets?

MR. LOCKINGER: Objection.

You can answer, if you
can.

A Yes. Well, that's not true.

No, it does not.

Q It doesn't?

A It does not.

1 Lichtenstein

2 Q And what is the basis of your
3 testimony?

4 MR. LOCKINGER: Objection.

5 You can answer, if you
6 can.

7 A When we hire cadets, we're only
8 entering into a contract that we're -- with a
9 cadet, they're going to provide a service for us
10 and we are going to give them a financial
11 benefit of some sort, and at some point they
12 agree to become police officers.

13 Q So it's your testimony that these
14 are standards that are applied to people who are
15 actually applying to become police officers as
16 opposed to people who are applying to become
17 cadets?

18 MR. LOCKINGER: Objection.

19 A Technically, that's correct.

20 Q And you testified that this
21 document that is entitled, "Medical and Physical
22 Fitness Standards and Procedures For Police
23 Officer Candidate," is a relatively new
24 document?

25 A Yes.

1 Lichtenstein

2 Q What does that mean?

3 A That means that there are certain
4 areas of the document that are relatively new,
5 especially in the neurological section, there is
6 a guideline that if someone with seizure
7 disorders is asymptomatic for one year, that
8 they should be considered for employment.

9 The older evaluations were two to
10 three years.

11 Q And I draw your attention down to
12 the second page.

13 A (Perusing document.)

14 Q Do you see there where it says at
15 the very bottom, it says, "Version 2011?" No,
16 the second page, the first page is the title
17 page.

18 That page right there.

19 So you see there it says,
20 "Version 2011, 9/14/2011"?

21 A Yes.

22 Q Is it still your testimony that
23 this document has been updated recently?

24 A I'll testify that this document,
25 that I have not reviewed this document.

1 Lichtenstein

2 The first time that I have seen
3 this document was about three years ago.

4 Q When was the last time you saw
5 it?

6 A Well, it's up on my bulletin
7 board in my office.

8 Q Okay.

9 But when was the last time you
10 looked at it?

11 MR. HARMAN: I'm going to
12 call for the production of the
13 version that is on the witness'
14 bulletin board in his office.

15 A The last time I looked at it was
16 last week.

17 Q So you regularly go to the one
18 that's on the bulletin board in your office?

19 A Yes.

20 Q And do you know what the date is
21 on that version?

22 A I've never checked.

23 Q When is the last time, when do
24 you recall getting that version, three years
25 ago?

1 Lichtenstein

2 A Yes, roughly three years ago.

3 I can clear this up if you would
4 like me to.

5 Q Sure.

6 A We have our own title
7 requirements with recommendations for job
8 evaluations that are purely generated by the
9 department. These are generated by the state.

10 And up until recently, and I say
11 "recently," within three to five years, we
12 pretty much went by our own guidelines.

13 Recently we have been directed to
14 go by New York State. So even though this
15 document may be an older document, I didn't
16 review it until the last three years.

17 Q And this document says that if
18 you have been asymptomatic for a year, that you
19 should be qualified?

20 A You should be considered for
21 qualification for a seizure disorder, which was
22 a new thing to me.

23 I thought, you know, that it was
24 at least two or three years.

25 Q And does it say anything about

1 Lichtenstein

2 MS?

3 A MS is listed as one of the
4 progressive neurological diseases that should be
5 considered for disqualification, but there is,
6 there is a qualifying remark that all disorders
7 need to be individually assessed.

8 Q And is there a time period by
9 which an individual who has been diagnosed with
10 MS should be asymptomatic before they can be
11 qualified under these standards?

12 A No, it's left pretty vague.

13 Q It's left vague.

14 But you have been directed to
15 follow these standards?

16 MR. LOCKINGER: Objection.

17 Answer if you can.

18 A No, we have not been directed to
19 follow the standards. But in terms of --

20 Q Why then do you review the
21 standards?

22 MR. LOCKINGER: Objection.

23 You can answer, if you
24 can.

25 A As I said before, and I'll say

1 Lichtenstein

2 now, our evaluation for chronic medical
3 disorders is going through a transition period,
4 and there's very few cohesive source documents
5 for police officer eligibility with medical
6 disorders.

7 In other words, there has been no
8 specific medical studies done in each one of
9 these medical issues. Most of them have been
10 decided by court cases.

11 So for -- so years ago if you
12 were a type one diabetic, you would be
13 disqualified, but because of court cases and the
14 fact that there is no good medical evidence to
15 show that type one diabetes will prevent someone
16 from doing the job today, that we have
17 reassessed those persons and now it is no longer
18 an automatic disqualification.

19 And it's the same thing with MS.

20 Q Have you ever been disciplined at
21 the police department?

22 MR. LOCKINGER: Objection.

23 A No.

24 Q Have you ever received any
25 negative feedback for qualifying someone who was

1 Lichtenstein

2 later determined to be, to have, to be suffering
3 an event in their life that would otherwise
4 disqualify them?

5 MR. LOCKINGER: Objection.

6 Q And if you don't understand my
7 question, I'm happy to rephrase it. It was a
8 complicated question.

9 A I understand and I'll answer it.

10 Q Okay.

11 A There have been times where I
12 will review a borderline orthopedic issue and
13 that candidate was either a member of the armed
14 forces or they are in another police department
15 and I would qualify those persons and then
16 within a short period of time that underlying
17 orthopedic disorder had come up and caused them
18 to become disabled.

19 So I'm not disciplined on those
20 things, but it is an area for self review.

21 Q And how about with respect to
22 neurological conditions, has that ever come up
23 where it has been brought to your attention that
24 someone became disabled within a relatively
25 short amount of time after you qualified them?

1 Lichtenstein

2 A To my knowledge, no.

3 Q Were there any signs in Mr.
4 Umanzor's file that he could become disabled in
5 the near future?

6 A As I've already stated, and the
7 reason for my disqualification for this
8 candidate was that I did not feel comfortable
9 with the short period of time between his
10 diagnosis and his application.

11 Q I'm just asking if there was
12 anything in his file that indicated that he was
13 on the verge of becoming disabled?

14 MR. LOCKINGER: Objection.
15 You can answer.

16 A Yes and no.

17 Q Well, what was in his file that
18 indicated to you that he was on the verge of
19 becoming disabled?

20 MR. LOCKINGER: Objection.
21 You can answer, if you
22 can.

23 A His MRI report listed that he had
24 a large parietal lesion and that he also had
25 secondary uptake in his cervical spine.

1 Lichtenstein

2 And there is an old, old, which
3 has been disproved, notion of something called
4 plaque load initially with MS persons, that the
5 higher your plaque load, the more likely you are
6 to not do well with the disease.

7 But there are some, and that was
8 the radiological journal that I had reviewed,
9 that a soft, poor clinical indicator is uptake
10 in the cervical spine, but that was a minor part
11 of my decision making.

12 Q You have mentioned some of the
13 data that was in his medical file.

14 A Yes.

15 Q But my question to you was what
16 in his medical file led you to believe that he
17 was on the verge of becoming disabled?

18 So is there anything specific in
19 his file, you said yes and no, and I asked you
20 what was the yes part and I'm still not clear
21 because you just told me what was in his file.

22 Why don't you tell me what
23 indicated to you with specificity that he was on
24 the verge of becoming disabled?

25 MR. LOCKINGER: Objection.

1 Lichtenstein

2 You can answer.

3 A The yes part was that not enough
4 time period had gone by since his initial
5 diagnosis.

6 Q And that indicated to you that he
7 was on the verge of becoming disabled?

8 A Yes.

9 Q And the medical and physical
10 fitness standards, did you go to them as part of
11 your evaluation of Mr. Umanzor's file?

12 MR. LOCKINGER: Objection.

13 You can answer.

14 A Not in this case.

15 Q You have testified that you don't
16 use e-mail as part of your work
17 responsibilities.

18 Do you take notes?

19 A If I write any note, it's on the
20 candidate's application form.

21 Q Do you generate memoranda?

22 MR. LOCKINGER: Objection.

23 You can answer.

24 A No, no, there is a formal --
25 there's a formal document that needs to be

1 Lichtenstein

2 generated.

3 There is no memoranda.

4 Q So other than taking notes in a
5 file --

6 A In the applicant's file.

7 Q In the applicant's file, do you
8 do any other kinds of writing?

9 MR. LOCKINGER: Objection.

10 You can answer.

11 A I will write an opinion for
12 certain -- for -- to answer certain medical
13 answers that arise within the department, but
14 not as it applies to candidates.

15 Q When is the last time you wrote
16 an opinion?

17 MR. LOCKINGER: Objection.

18 You can answer.

19 A The last time was right after
20 9/11, there was a question about the incidence
21 of sarcoid and I was asked to see if there was
22 an abnormal rise in sarcoid in New York City
23 post 9/11 exposure in the Police Department
24 versus the civilian population.

25 Q Have you ever written an opinion

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Lichtenstein

on MS?

A No.

Q Have you ever written an opinion
on neurological disorders?

A No.

Q And how long have you been in
private practice?

A You read it.

Q Thirty-one years?

A Thirty-one years.

Q During your time in private
practice, have you ever diagnosed anyone with
MS?

MR. LOCKINGER: Objection.

You can answer.

A Unfortunately, yes.

Q How many times?

A Many times.

Q Before you reach a decision to
make a final diagnosis in your private practice,
do you make a referral to another doctor?

A Generally, no.

Q So you don't refer patients to a
neurologist?

1 Lichtenstein

2 A I refer them for treatment.

3 Q But you diagnose before you
4 refer?

5 A Correct.

6 Q And how many times in the last
7 year have you diagnosed someone with MS?

8 A In the last year?

9 Q Yes.

10 A I would say three people in the
11 last five years.

12 It's not a very common diagnosis.

13 Q Three people in the last five
14 years?

15 A Yes.

16 Q And did you send them for second
17 opinions?

18 A I sent them for treatment.

19 Q Who did you send, to whom did you
20 send them for treatment?

21 A There are area neurologists and
22 there's an MS specialist at NYU that I use.
23 What's his name? I don't remember.

24 I send the tougher cases to him.

25 The problem with MS, and there is

1 Lichtenstein

2 no definitive diagnostic test for MS. MRIs are
3 helpful, lumbar spine fluid analysis is helpful,
4 but the technical diagnosis for MS is
5 fluctuating neurological changes through time.

6 There is no exact medical test.

7 So a lot of times you have to
8 infer MS, and that can lead in a delay of
9 diagnosis.

10 Q Do you believe it's -- have you
11 ever prescribed someone medication for MS?

12 A I don't believe that's
13 appropriate.

14 I do treat acute exacerbations of
15 MS with IV steroids in the hospital.

16 Q But I'm talking about in your
17 private practice?

18 A No.

19 Q So you believe it's in the
20 patient's best interest to refer them to a
21 specialist for treatment?

22 A Yes.

23 Q And you don't prescribe medicine?

24 A Only on an emergency basis, and
25 that's only for an acute flareup of MS.

1 Lichtenstein

2 Q And is that because a specialist
3 is more qualified to assess the patient's needs?

4 MR. LOCKINGER: Objection.

5 You can answer, if you
6 can.

7 A That's part of it.

8 The other part of it is, most,
9 MS drug therapy is very expensive, and most
10 medical insurances wouldn't consider paying for
11 it unless it was being referred by a specialist.

12 Q I'm handing you what has been
13 marked as Plaintiff's 12 (handing).

14 Please take a look at it.

15 A (Perusing document.) Okay.

16 Q Do you recognize this?

17 A I recognize the second page.

18 Q What about the second page do you
19 recognize?

20 A That was the medical clearance
21 letter from the candidate's doctor.

22 Q And you would agree that it
23 clears Mr. Umanzor for service as an NYPD cadet?

24 MR. LOCKINGER: Objection.

25 You can answer.

1 Lichtenstein

2 A For the most part, yes.

3 I was slightly concerned about,
4 there was a reference to some residual
5 neurological changes in, you know, a mild
6 sensory loss in the fingers of the hand, but
7 when I had gone through his physical exam, that
8 was not mentioned, so I didn't know if that was
9 an error or whether it was just not significant
10 in his medical issues.

11 Q But did you ever ask for any
12 additional information?

13 A No. I compared the letter to his
14 physical exam that the doctor sent and I was
15 satisfied that this letter qualified, but was
16 qualified.

17 Q You relied on the physical exam?

18 A Yes.

19 Q And the physical exam didn't
20 indicate any mild sensory loss?

21 A Correct.

22 Q I'm handing you what has been
23 marked as Plaintiff's Exhibit 13 (handing).

24 Please take a look at it.

25 A (Perusing document.) Okay.

1 Lichtenstein

2 Q Do you recognize this --

3 MR. HARMAN: For the
4 record, this is a series of
5 documents Bates stamped D00019
6 through D00021.

7 Q Do you recognize this series of
8 documents?

9 A I remember looking at them.

10 Q So did you review these documents
11 to make your determination related to Mr.
12 Umanzor's disqualification from the cadet
13 program?

14 MR. LOCKINGER: Objection.
15 You can answer.

16 A Yes.

17 Q I'm handing you what has been
18 marked as Plaintiff's Exhibit 14 (handing).

19 Please take a look at it.

20 A (Perusing document.) Okay.

21 Q Was Mr. Umanzor taking
22 medication?

23 A Yes.

24 Q And do you know what medication
25 he was taking?

1 Lichtenstein

2 A He was taking one of the
3 immunomodulators, he was taking Tecfidera on
4 7/24/13 and he was having some slight reaction
5 to it, but that didn't concern me.

6 Q To what extent does medication
7 prevent relapse?

8 A The newer immunomodulators have
9 been found to be very effective, which is why we
10 are altering our evaluation of MS patients.

11 In the past the medications were
12 not that effective.

13 Nowadays with his type of
14 relapsing/remitting and no symptoms over a
15 period of time, he should do very well and be
16 asymptomatic for decades.

17 Q I'm handing you what has been
18 marked as Plaintiff's Exhibit 15 (handing).

19 Please take a look at it.

20 A (Perusing document.) Okay.

21 MR. HARMAN: For the
22 record, this is D000026 through
23 27.

24 Q Do you recognize these documents?

25 A Yes.

1 Lichtenstein

2 Q Were they part of the collection
3 of documents that you reviewed related to your
4 disqualification of Mr. Umanzor?

5 MR. LOCKINGER: Objection.
6 You can answer.

7 A Yes.

8 MR. HARMAN: I don't think
9 I have any more questions, but if
10 we could just take about five
11 minutes, but I think we're just
12 about done.

13 I am, however,
14 technically, going to leave your
15 deposition open. We have made a
16 variety of different requests on
17 the record and we'll follow up in
18 a writing with more detailed
19 requests, but you can take that
20 up with your lawyer.

21 Give me five minutes,
22 please?

23 MR. LOCKINGER: Yes.

24 I have a couple on
25 redirect.

1 Lichtenstein

2 Just literally two.

3 MR. HARMAN: Let me
4 confirm that I'm done and then
5 you can do redirect.

6 MR. LOCKINGER: Sure.

7 (Whereupon, at 1:41 p.m., a
8 recess was taken.)

9 (Whereupon, at 1:50 p.m.,
10 the deposition resumed with all
11 parties present.)

12 MR. HARMAN: I have a few
13 more followup questions and I
14 will give you your opportunity to
15 ask questions.

16 BY MR. HARMAN:

17 Q Do you know when Mr. Umanzor was
18 diagnosed with MS?

19 A I would have to refer back to his
20 record.

21 I remember when I reviewed it the
22 time period of his diagnosis and treatment and
23 his application period was less than a year.

24 Q It was?

25 A I believe so, yes.

1 Lichtenstein

2 Q The difference between --

3 A From when he got his last
4 treatment, because at first he was treated with
5 IV steroids, I think, for his acute issue, I
6 know he had two attacks and one of them he was
7 treated acutely and appropriately with IV
8 steroids.

9 And then as it became stable, he
10 was put on maintenance therapy. And, once
11 again, I would have to reference the file
12 itself, but from the time he was, I would say
13 from the time he was placed on his maintenance
14 therapy to his application period was less than
15 one year.

16 Q Do you know if he was diagnosed
17 before or after the attacks?

18 A I assume with his age and his
19 presentation that they would make the diagnosis
20 right away, but I can't say.

21 Q So you believe it was sometime
22 after the attacks?

23 A I believe he had his attack, and
24 because of his symptoms he was, they made an
25 immediate diagnosis, I would assume.

1 Lichtenstein

2 I never really checked.

3 Q And you were basing your
4 determination to disqualify him based on the
5 period between his last attack and his
6 application?

7 MR. LOCKINGER: Objection.

8 You can answer.

9 A Yes. Yes.

10 Q I'm going to hand you, again,
11 Plaintiff's Exhibit 12 and ask you to turn to
12 the second page (handing).

13 A (Perusing document.) Okay.

14 Q Do you see where it says --
15 what's the date of this letter?

16 A It's dated April 15, 2014.

17 Q And then what does the first
18 sentence say?

19 A "To whom it may concern:

20 "Mr. Umanzor is a patient under
21 my care for relapsing/remitting multiple
22 sclerosis diagnosed in February 2013."

23 Q So you would agree with me that
24 his attacks were sometime before February 2013?

25 MR. LOCKINGER: Objection.

1 Lichtenstein

2 A Yes.

3 Q And you would agree with me that
4 you received this letter sometime after April
5 15, 2014?

6 A Okay.

7 Q Yes or no?

8 A I don't know.

9 Q You don't know when you received
10 it?

11 Any reason to believe that you
12 received it before April 15, 2014?

13 A I don't remember.

14 Q I'm asking you if you have any
15 reason to believe that you received -- that this
16 letter is misdated, that you somehow received it
17 before April of 2014?

18 A I don't believe so.

19 Q Okay.

20 MR. HARMAN: No further
21 questions.

22 EXAMINATION

23 BY MR. LOCKINGER:

24 Q Earlier today you discussed Randy
25 Umanzor being placed on medical review and then

1 Lichtenstein

2 later you talked about there being a decision to
3 disqualify him and a subsequent medical review.

4 Is there -- is medical review a
5 term of art within the appeal process or within
6 the process of an application for a candidate
7 for a police officer position?

8 A I'm sorry, is it a what?

9 Q You originally placed Randy
10 Umanzor on medical review, correct?

11 A Yes.

12 Q And then subsequently you made a
13 decision to disqualify him, correct?

14 A Yes.

15 Q And after you made the decision
16 to disqualify him, was there something else
17 available to him that was not medical review?

18 A Yes, I believe, I believe he
19 had -- there was an appeal process.

20 Q So appeal and medical review are
21 two distinct things?

22 A Correct.

23 Q You just stated --

24 MR. LOCKINGER: Actually,
25 no further questions.

Lichtenstein

MR. HARMAN: I don't
either.

Thank you.

(Whereupon, at 1:55 p.m.,
the deposition was concluded.)

DAVID LICHTENSTEIN

Subscribed and sworn to
before me
this [REDACTED] day of [REDACTED], 2015.

NOTARY PUBLIC

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I N D E X P A G E

Witness	Examination By	Page
David Lichtenstein	Mr. Harman	4
	Mr. Lockinger	142

EXHIBITS

Plaintiff's Exhibits	Description	Page
1	One-page document	4
2	A three-page document	4
3	A four-page document	4
4	Health Grove document	4
5	A three-page document	4
6	Complaint	4
7	Summons	4
8	Answer	5

EXHIBITS

Plaintiff's Exhibits	Description	Page
9	Verified Bill of Particulars	5
10	Amended Verified Bill of Particulars	5
11	Medical and Physical Fitness Standards and Procedures for Police Officer Candidate	5
12	A document Bates stamped D000017 through D000018	5
13	A document Bates stamped D000019 through D000021	5
14	A document Bates stamped D000022 through D000024	6
15	A document Bates stamped D000026 through D000027	6

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C E R T I F I C A T E

STATE OF NEW YORK)

) ss.

COUNTY OF NEW YORK)

I, MARGARET M. HARRIS, a Shorthand
(Stenotype) Reporter and Notary Public of
the State of New York, do hereby certify
that the foregoing Deposition, of the
witness, DAVID LICHTENSTEIN, taken at the
time and place aforesaid, is a true and
correct transcription of my shorthand
notes.

I further certify that I am neither
counsel for nor related to any party to
said action, nor in any wise interested in
the result or outcome thereof.

IN WITNESS WHEREOF, I have hereunto
set my hand this 28th day of July, 2015.

MARGARET M. HARRIS

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